BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-9/VKV/NK/9857/2020-21]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:
Saffron Capital Advisors Pvt. Ltd.
(SEBI Registration No. INM000011211**)**

In the matter of Acropetal Technologies Limited

FACTS OF THE CASE:

1. Securities and Exchange Board of India (herein after referred to as "**SEBI**") conducted an investigation in the matter of Initial Public Offer (IPO) of Acropetal Technologies Limited ("ATL"/ "the Company"). The scope of investigation was to ascertain whether there were any violation(s) of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "**ICDR Regulations**"), SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") and Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as "**SCRA**") with regard to the following:
   Bidding process in the IPO of ATL.
   Examination of disclosures made by the company in the offer documents / prospectus and deviations from objects of issue, if any.
   Examination of fund flows from IPO proceeds.

2. During the investigation it was observed that Saffron Capital Advisors Private Limited (hereinafter referred to as "**Saffron/Noticee**") was the Book Running Lead Manager (**BRLM**) with regard to the IPO. Hence, further investigation was carried out to ascertain the role of Merchant Banker, i.e., the Noticee w.r.t. the non-disclosures / wrong disclosures made in the prospectus of the IPO.

3. In the investigation report (hereinafter referred to as "**Report/IR**") following was inter-alia observed w.r.t. the non-disclosures / wrong disclosures made in the prospectus of the IPO:

a) On page 63 of the prospectus of ATL, it was disclosed that ATL has availed of a Bridge Loan facility of Rs. 20 crore from United Bank of India for meeting expenses forming part of the Objects of the Issue. The Bridge Loan was sanctioned by United Bank of India (hereinafter referred to as "**UBI**") vide their letter dated 16/09/2010, and was repayable from the Issue proceeds. Further, it was disclosed in the prospectus that of the said amount, Rs. 20 crore has been utilized till 21/01/2011 as under, as certified by the statutory auditor, M/s K. Gopalakrishnan & Co, Chartered Accountants vide letter dated 24/01/2011:

i. Advance towards construction of building: Rs.7.00 Cr
ii. Working capital: Rs.13.00Cr.

b) Upon analysis of the bank statement of ATL, the utilization of aforementioned Rs. 20 crore was as follows:

Details	**Amount** (Rs. crore
Equastone Properties	7.00
Crystal Euphoria, Hongkong (in US $)	4.64
Acropetal (in US $)	4.40
Optech Consulting – (in US $)	2.78
Payment to subsidiaries	0.55
Other (cash withdrawal etc)	0.63
Total	**20.00**

c) From the MCA website, it was observed that, Mrs. Malini Reddy (Malini), wife of Promoter & CMD of ATL Shri Ravikumar, was the major promoter of M/s Equastone Properties Pvt Ltd (Equastone) and was holding 90% shareholding and other directors were employees of ATL (Prashanth Kumar and Madhava Reddy). From the KYC details of Equastone submitted by UBI, it was observed that the authorized signatory to the bank accounts of Equastone was Shri D Vedavyasa Rao, Head- Accounts of ATL.

d) ATL vide its letter dated 02/05/2016, had informed that said amount of Rs.7 crore was transferred to Equastone as advance towards construction of software development center. ATL has further submitted that subsequently said project was cancelled and ATL received back the advance paid to Equastone.

e) Further, from the bank account statements of ATL, it was observed that the remaining Rs.13 crore was transferred abroad, for which no reason whatsoever could be provided by ATL during the investigation. Hence, it is observed that entire transaction was not genuine and disclosure as appearing in the prospectus was wrong.

f) Equastone was a related entity of ATL / Ravikumar as wife of Ravikumar was the majority shareholder in Equastone and employees of ATL (viz. Prashanth Kumar and Madhava Reddy) were the directors in Equastone during 2010-11. The aforementioned transactions with Equastone, being a related party were not disclosed by ATL in its prospectus.

g) Further, from the MCA filing, it was observed that, Mrs. Malini Reddy (Malini) had transferred her entire shareholding to Shri Prashanth Kumar and Madhava Reddy who were employees of ATL itself and the filing with regard to change in shareholding pertaining to annual filing for the year 2007 with MCA was done only on July 25, 2011, (i.e well after the IPO). Hence, it was evident that Equastone was a related company of ATL / Ravikumar

h) Noticee had submitted Due diligence certificate w.r.t the IPO of ATL.

i) Noticee vide letter dated 24/06/2016 has submitted that, Mrs. Malini Reddy (Malini) had resigned as director in Equastone and transferred her entire share-holding in 2006 to 'a third party'. Noticee was further asked to provide any evidence to substantiate its claim that "Mrs. Malini Reddy had transferred her entire holding in 2006" and also to provide details of 'third party' as mentioned in its letter, to which Noticee, vide letter dated 07/07/2016 had submitted that they did not possess any further information of the transferees and that they have no further documentary evidence in support of the observations that Mrs. Malini Reddy transferred her entire holding to a third party in the year 2006.

j) Since Equastone, being an entity promoted by wife of Shri Ravikumar, (CMD of ATL) and also a promoter group of ATL, the transactions with Equastone being Related Party transactions, should have been disclosed in the prospectus and Saffron failed to do the due diligence in this regard. Had Saffron independently verified the background of Equastone, even by accessing publically available information (like MCA database or any other such means), it would have known about the connection of Ravikumar/wife of Shri Ravikumar and Equastone. Thus, Saffron, as BRLM to the public issue of ATL has failed to do independent verification.

k) Noticee failed to exercise due diligence while ensuring the veracity and adequacy of disclosure made in the prospectus as required under Regulation 64(1) of ICDR Regulations and had also failed to perform its duties as mentioned under various clauses of Code of Conduct for Merchant Bankers specified under Schedule III in SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as "**Merchant Bankers Regulations**").

4. In view of the abovementioned findings of the investigation, adjudication proceeding is initiated in respect of the Noticee under section 15HB of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

5. SEBI vide order dated June 12, 2017 appointed Shri Sahil Malik as the Adjudicating Officer under section 15 I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (SEBI Adjudicating Rules) for the alleged violations of Regulation 60(7)(a) and 64(1) of SEBI (ICDR) Regulations, 2009 and Regulation 13 read with Clause 1, 2, 3, 4, 6, 7 & 20 of Code of Conduct for Merchant Bankers specified under Schedule III in SEBI (Merchant Bankers) Regulations, 1992 to inquire into and adjudge the aforesaid allegations under section 15HB of the SEBI Act. Pursuant to the transfer of Shri Sahil Malik, the undersigned was appointed as the Adjudicating Officer vide order dated August 13, 2019, to inquire into and adjudge the aforesaid violations.

SHOW CAUSE NOTICE and REPLY

6. A Show Cause Notice dated December 15, 2017 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4 of the SEBI Adjudicating Rules to show cause as to why an inquiry should not be initiated and penalty not be imposed under section 15HB of the SEBI Act for the allegation as detailed in the said SCN. The SCN was served upon the Noticee.

7. **The SCN alleged the following non–disclosure/Wrong Disclosure in the Prospectus:**

a) It is alleged in the SCN that the Noticee, as BRLM to the public issue of ATL has failed to do independent verification, failed to exercise due diligence while ensuring the veracity and adequacy of disclosure made in the prospectus and had also failed to perform its duties as mentioned under various clauses of Code of Conduct for Merchant Bankers specified under Schedule III in Merchant Bankers Regulations. Due diligence certificate has been submitted by Noticee in the capacity of BRLM w.r.t the IPO of ATL.

b) As per the SCN ,the role of Noticee is as follows:

i) On page 64 of the prospectus, it was disclosed that ATL had taken a bridge loan of Rs. 20 crore, out of which Rs. 7 crore was used towards construction of building and remaining, towards working capital. However, ATL, vide its letter dated 02/05/2016, had informed that said amount of Rs. 7 crore was transferred to M/s Equastone Properties Pvt Ltd (Equastone) as advance towards construction of software development center. ATL has further submitted that subsequently said project was cancelled and ATL received

back the advance paid to Equastone. In this regard, it was observed that Equastone was a related entity of ATL / Shri Ravikumar.

ii) Further, from the bank account statements of ATL, it was observed that the remaining Rs. 13 crore was transferred abroad, for which no reason whatsoever could be provided by ATL. Hence, it is observed that entire transaction was not genuine and disclosure as appearing in the prospectus was wrong.

iii) Noticee being BRLM to the IPO of ATL had submitted due diligence certificate w.r.t the IPO of ATL.

8. The Noticee vide letter dated January 04, 2018 sought extension of time till January 12, 2018 to file the reply to the SCN. Thereafter, vide letter dated January 11, 2018, the Noticee submitted its reply to the SCN. The Noticee had also requested for a personal hearing in the matter. Accordingly, in the interest of natural justice, The Noticee was provided an opportunity of personal hearing through WebeX due to ongoing pandemic as well as for Hearing at SEBI Head Office on December 11, 2020 vide Hearing Notice ("HN") dated December 02, 2020.

9. Since Enquiry proceeding had also been initiated against the Noticee parallely in this matter for same cause of action and set of violations and hearing in the matter was scheduled on November 10, 2020 in this regard, the Noticee along with its authorised representative appeared before designated authority and also made additional submission vide letter dated November 13, 2020.

10. Therefore, in response to the HN, Noticee in its letter dated December 07, 2020 has *inter-alia* stated that, *the allegations in both the show cause notices are the same and since we have no further submissions to make we request you to kindly take our additional submissions during the personal hearing on November 10, 2020 and vide our letter dated November 13, 2020 as our further submissions to this Notice. As we have no further submissions to make in this regard, we would like to waive the opportunity afforded to us of the* persona hearing on December 11, 2020 at 2.45 pm.

11. Thus, as requested by Noticee, the opportunity of personal hearing was done away with and his submissions made during the personal hearing on November 10, 2020 and letter dated November 13, 2020 has been taken on record and considered as further submissions in the instant proceedings.

12. In response to the allegations mentioned in the SCN, Noticee vide letter dated January 11, 2018 and November 13, 2020 has *inter-alia* submitted the following:

a. It is a fact that the Company took a bridge loan of Rs.20 crores, the details of which were prominently disclosed in Page 63 of the Red Herring Prospectus

dated February 02, 2011 filed with SEBI and again on page 63 in the Prospectus. The details of the usage of the funds was also disclosed in the RHP and Prospectus as Rs.7 crores towards construction of building and the remaining Rs.13 crores towards Working Capital. Both the uses are clearly as per the objects of the issue.

b. *We would like to submit that as a part of the due diligence procedure, we circulate a checklist to our prospective clients, wherein the list of documents that are needed for due diligence and other particulars that are to be confirmed by the client is indicated. This document is circulated before the preparation of the DRHP and is continuously updated at the time of the preparation of RHP and the preparation of Prospectus.*

c. *One of the queries that is posed to our clients is to provide a list of the names of persons / entities who constitute the promoter / Promoter Group in accordance with the definition of Promoter and Promoter Group (Regulation 2(zb)) of the SEBI (ICDR) Regulations, 2009.*

d. *Based on the list provided the promoter / promoter group matrix is drawn up by us and as a part of the Due Diligence Procedure a cross verification is done with the other documents that are provided by the company. The documents with which cross verification is done are the Annual Reports of the Company particularly the section on Related Party Transactions which lists out all the entities with which the company is related and has transactions.*

e. *Since Section 297 of the Companies Act. 1956, inter alia, laid stress on the fact that a director of the company or his relative or a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company - (a) for the sale, purchase or supply of any goods, materials or services;, except with the consent of the Board of Directors of the Company. Going by this directive, the Minutes of the Board Meetings and General Meetings were verified thoroughly by us to note / identify any related party transactions. The documents are verified for a period of 5 years before the date of Due Diligence and continued to be verified till filing of Prospectus.*

f. *In the present case, the name Equastone never figured in the Annual Reports for the financial years 2006 – 2010 under the section Related Party Transactions that the company had entered into. Further there was no reference to this name in the Minutes (Board and Shareholders) provided by the company to us for the five year period prior to February 2011. It is also submitted that the Company did not provide the name Equastone to us in the checklist provided to them under the head "Promoter and Promoter Group".*

g. *It is further submitted that we also have to rely on the statements / certificates given by the statutory auditors of the company, who is considered an "Expert" under The Companies Act, 1956 for the purpose of Financial Statements and Tax Benefits included in the RHP and Prospectus. The Statutory Auditor determines who is a Related Party based on the guidelines given in accounting standards #18 issued by the Institute of Chartered Accountants of India and the parameters specified and information provided by the company. It is pertinent to mention here that the Statutory Auditors, who have been associated with the company for a period of time have not mentioned the name Equastone under the head "Related Party" in any of the Annual Reports or any further certificate that was provided by them to us. It is submitted here that the Company availed bridge loan in October 2010 and the RHP / Prospectus contained the details of the utilization of the proceeds of the bridge loan and the financial results as at December 31, 2010 and none of the notes contained therein as provided by the Statutory Auditors states that Equastone is a Related Party. The copy of the certificate given by the Statutory Auditors regarding the utilization of proceeds of the Bridge Loan is enclosed as* ***Annexure 1****. The financial statements as provided by the Statutory Auditors which is included in the RHP / Prospectus is attached as* ***Annexure 2****. It may incidentally be noted that even in the Audit report for financial year 2010-11 (after the company got listed), neither Equastone is mentioned nor is this transaction mentioned under Related Party disclosure duly signed by the statutory auditor.*

h. *We also further submit that we also take certain declarations from the Promoters / Directors of the Company regarding the interest of the Directors / Promoters and we enclose a copy of the certificate received as* ***Annexure 3*** *from which it can be seen that they have categorically stated that there were no contracts at all in which the directors / promoters were directly or indirectly interested except those stated under the related party transactions and Equastone did not figure in the Related Party Transactions.*

i. *Given the above, there was no other means by which we could have concluded that Equastone was a related party to the company.*

j. *We would also like to submit that unlike today's scenario, at that time i.e 2010-11 the details of the directors, promoters, the companies in which they were interested in etc was not available for online search and the diligence had to be done only on the basis of declarations, filings done in the physical form and other documents that were sought by us for the due diligence purpose.*

k. *Since there was no mention of the name Equastone anywhere in any of the documents mentioned above, on which we rely upon to do the due diligence, we are confident that we have done our diligence with utmost care and have ensured full disclosure in the RHP as well as in the Prospectus.*

l. *With regard to Paragraph 121 we would like to state that working capital is for several purposes and this could be used by the company in India or by its branches / overseas subsidiaries. The allegation that the transactions are not genuine is an assumption and not based on facts. Working Capital is needed for meeting the liquidity positions, salaries, inventory management and to fund the expansion plans of the company. This could have been needed either at the Head Office at Bangalore or at any of its site offices or client locations globally. Therefore the amounts could have been transferred to any of these overseas offices/locations. As regards the usage of funds the Statutory Auditor after verification of the usage of funds has provided a certificate, copy of which is already enclosed as* ***Annexure 1****, that the amount is utilized for Working Capital. We therefore confirm that the disclosures as appearing in the Prospectus are true and not false as alleged.*

m. *We confirm that we have submitted a Due Diligence Certificate with regard to the IPO of the company as stated in Paragraph 122. To summarize the various levels at which we have done due diligence are as under:-*

(A) The minutes book (Board and Shareholders) verified for last 5-6 years (B) The promoter and promoter group matrix duly signed by the promoter from time to time (C) The Statutory Auditors report dated 24th January, 2011 in connection with utilization of the bridge loan (D) The Statutory Auditors report dated 19th January, 2011 at the time of filing revised RHP / Prospectus (E) Declaration from company management stating that there are / there are no other contracts in which the promoters / directors are interested except for those discussed under the head "Related Party Transactions" in the Annual Report / Financial Statements of the Company. (F) Annual Reports of the company of the last 5 financial years

With regard to the allegation in paragraph 123, we completely deny that we as BRLMs have failed to independent verification and have failed to exercise due diligence. We have exercised utmost care and caution and have carried out due diligence of the highest level. We have further ensured that the disclosures are true to the best of our knowledge and have performed all the duties mentioned under the Code of Conduct for Merchant Bankers with utmost sincerity

13. Noticee vide letter dated November 13, 2020 has *inter-alia* made the following submissions:

I. Equastone not classified as a Related

Party: *Our submission:*

Equastone, to which an advance of ₹ 7 crores has been given for construction has not been shown as a related party and this transaction has not been classified as a related party transaction. With regard to this, we would like to draw attention to the Order No: WTM/MPB/EFD-1-DRA-IV/67/2019 dated September 27, 2019, passed by the Whole Time Member, Ms. Madhabi Puri Buch, particularly paragraph no. 167 which is reproduced below:

"ATL has denied making wrong disclosure in the Prospectus. It has submitted that the offer document has been certified by the Merchant Banker and the said certification cannot be ignored or rushed away lightly. In this regard, I note that Regulation 60(7)(a) of ICDR Regulations places the onus on the Issuer company to make true and fair disclosure in any advertisement caused to be issued by the Issuer. Further, Clause (IX)(B)(12) (a)(v) Part A of Schedule VIII of ICDR Regulations, also places the onus on Issuer to make disclosure of related party transactions. Therefore, in view of the explicit provisions imposing the burden on the Issuer Company, ATL cannot take shelter behind the certification given by the Merchant Banker and fail to discharge its independent responsibility to make true, fair and complete disclosure."

From the above it is amply clear that the primary responsibility of making a disclosure of related parties and transactions with such related parties is with the Issuer Company and in the absence of such a disclosure from them, we as Merchant Bankers, would be unable to detect the same.

Having said that, in addition to the submissions made by us regarding the due diligence process undertaken by us while handling an issue, we would like to submit that we also check on the MCA website to see if any of the directors / promoters are associated with any other company details of which may not have been provided by the issuer. In the instant case, Ms. Malini Reddy, spouse of Mr. D. Ravikumar (Managing Director of Acropetal Technologies Limited), was not a director of Acropetal when the issue was being handled by us / DRHP was being prepared / RHP was filed with the ROC and SEBI. We were informed that she is occupied as a housewife and never takes part in any company activities. Since she was ***not a director or a promoter of the company and since she was only part of promoter group, that too because of definition under the ICDR Regulations, 2009,*** *hence there was no ground to take her DIN Number or verify further. In the absence of a DIN Number, no data can be procured from the MCA Website and it is impossible to know the companies with which she was associated. Since the allegation that Equastone is a related party is only because Ms. Malini Reddy, wife of Managing Director was a majority shareholder this could not have been established by us by any amount of independent verification.*

Equastone appears only as a top ten shareholder holding 3% equity of ATL on a pre-Issue capital and since the holding was less than 5%, no further enquiries about this entity was made. We make further enquiries only in respect of significant shareholders in the company. Equastone did not meet that criteria as it held only 3% equity of ATL (pre-Issue basis).

We would also like to draw your attention to Page No. 155 of the Red Herring Prospectus wherein, the statutory auditor, the expert with regard to the financial statements, has specifically stated the following on identifying related party transactions, (as a part of significant accounting policies) in confirmation with AS-18 of the Accounting Standards, applicable at that time:

"(m) Related Party Transaction

Parties are considered to be related if at any time during the year, one party has the ability to control the other party or to exercise significant influence over the other party in making financial and / or operating decision."

Further the statutory auditor was the auditor of Acropetal since inception and was hence expected to know the details of the company and the nature of its dealings in detail.

Attention is also drawn to Annexure 18 appearing on Page 168 / 169 of the Red Herring Prospectus, where the statutory auditor has listed the Related Parties and the details of the transactions with them in accordance with AS -18. It is an expert certification and based on a very comprehensive and exhaustive definition of Related Party and Related Party Transactions. Equastone neither figures anywhere as either Related Party or in Related Party Transactions

Since we did not have the requirement to verify the connection of Ms. Malini Reddy on the MCA website (also at the nascent stage at that time as it had gone online only in September 2006), we had to rely on the Board Minutes, Annual Report, Balance Sheet, declarations of the promoters/directors / management of the Issuer Company. At this juncture we would like to rely on the SAT Order in the matter of Corporate Strategic Alliance Vs SEBI passed on 29.03.2019 as per which, "…….. The balance sheet has been duly audited by the Statutory Auditors and accepted by the Income Tax Authorities. It is not open to the AO to question the entries in the balance sheet. The AO is not an expert to juggle the accounting figures and hold as to which entry should come under "Fixed Assets" or under the "Revenue Expenditure". The Merchant Banker has only disclosed what the balance sheet was showing for which purpose the Merchant Banker cannot be found at fault……..."

We would also like to draw your kind attention to paragraph 171 of Order No. WTM/MPB/EFD-1-DRA-IV/67/2019 dated September 27, 2019, passed by the Whole Time Member, Ms. Madhabi Puri Buch, wherein it is stated that "……..Moreover, no material has been brought on record to show that why the transaction with Equatstone would have raised red flags for the Directors especially when the money was transferred to Equastone….." which only shows that the Board Minutes or any other document that was available for verification did not contain Equastone as a related party to enable us to make further enquiries in this regard.

To summarize, we have checked at 5 levels of diligence:

a) *Audited Annual Reports of ATL for last 5 years*
b) *Minutes book of ATL for last 5 years*
c) *Undertakings/Declarations from the management of ATL*
d) *Restated Audit report signed by the statutory auditor of ATL*
e) *Promoter & Promoter group matrix submitted by the Company*

There has been no reference whatsoever of Equastone in any of the above, either as a related party or a part of any related party transactions. Therefore, such disclosures had to necessarily come from the Issuer Company and/or the reports which were issued by the statutory auditor, who was the auditor of the Issue Company since its incorporation in April 2001. Hence, we sincerely believe it was beyond reasonable diligence to suspect that Equastone was a related party. There was just no reason to suspect the same.

II. Working capital of Rs 13 crores:

Our submission:

It has been alleged that Rs 13 crores was transferred abroad and therefore these transactions do not appear to be genuine. In this regard we would like to submit that Acropetal was a 100% Export Oriented Unit (EOU) and was operating from a Software Technology Park. The financial statements as given in pages 152, 170-172 (standalone) and 178, 193-195 (consolidated) of the RHP of Acropetal, which discuss the P/L statements and geographical break-up of revenue (as a part of Annexure 20 of the Financial Statements) indicate that almost 100% of the revenue earned by the company was from exports from USA, Middle East, Europe and Asia. Hence it is but natural that funds for working capital would be spent overseas.

In case the operations of the Issuer company were domestic in nature, and the money had been spent abroad, it would have been suspicious and raised a red-flag. Since the operations of ATL were entirely from foreign countries, these transactions appeared to be genuine to us.

Further the Statutory Auditor had classified the same as Working Capital in the statement of deployment of funds and the statutory auditor being an expert, he is the authority as regards the classification of various head of expenditure. We would again like to rely on SAT Order in the matter of Corporate Strategic Alliance Vs SEBI passed on 29.03.2019 as per which, "…….. The balance sheet has been duly audited by the Statutory Auditors and accepted by the Income Tax Authorities. It is not open to the AO to question the entries in the balance sheet. The AO is not an expert to juggle the accounting figures and hold as to which entry should come under "Fixed Assets" or under the "Revenue Expenditure". The Merchant Banker has only disclosed what the balance sheet was showing for which purpose the Merchant Banker cannot be found at fault……..."

Infact even post-IPO, SEBI mandates that the utilization of IPO proceeds be certified by the statutory auditor and disclosed in the quarterly and annual financial statements of the Issuer company. This norm of diligence was followed by us, and till date is being followed by all Merchant Bankers and Issuer Companies (except for IPO's where monitoring agency is required to be appointed).

We summarise the above as:

a) *ATL was a 100% EoU, operating from a STP*
b) *ATL had almost 100% revenues from export income, across world geographies*
c) *Hence it was natural that working capital funds would be spent overseas*
d) *Funds deployed as working capital were certified by the statutory auditor in the statement of funds deployed*
e) *Statutory auditor certification for Post-IPO funds utilization is the norm for back-up and diligence*

Based on the aforesaid, we sincerely believed that the working capital funds spent were towards genuine expenditure and there was no reason for us to suspect anything suspicious.

<u>Concluding submission</u>

We would once again like to humbly submit that we had exercised due diligence in letter and spirit and we have not violated the provisions of Regulation 60(7)(a) and Regulation 64 of the ICDR Regulations, 2009 or the Code of Conduct for Merchant Bankers. As far as diligence is concerned, we believe we are an extended arm of the regulator and conduct our diligence activities accordingly. Ever since we received our SEBI Merchant Banking License in the year 2008, we have not been involved in any adjudication proceedings or matters involving serious offences/frauds and no penalties have been imposed on us.

CONSIDERATION OF ISSUES AND FINDINGS

14. I have carefully perused the charges levelled against the Noticee in the SCN, the material / documents available on record and oral and written submissions of the Noticee. The issues that arise for consideration in the present case are :

I. **Whether the Noticee has violated Regulation 60(7)(a) and 64(1) of SEBI (ICDR) Regulations, 2009 and Regulation 13 read with Clause 1, 2, 3, 4, 6, 7 & 20 of Code of Conduct for Merchant Bankers specified under Schedule III in SEBI (Merchant Bankers) Regulations, 1992.**

II. **Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15HB of SEBI Act; and**

III. **If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act read with respective Adjudication Rules?**

15. Before proceeding further, I would like to refer to as under the relevant provisions of the clause 1, 2, 3, 4, 6, 7 & 20 of code of conduct given under Schedule III read with regulation 13 of Merchant Bankers Regulations, Regulation 60(7)(a) and 64(1) of SEBI (ICDR) Regulations, 2009:-

Relevant provisions of ICDR Regulations

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

(7) Any advertisement or research report issued or caused to be issued by an issuer, any intermediary concerned with the issue or their associates shall comply with the following:

(a) it shall be truthful, fair and shall not be manipulative or deceptive or distorted and it shall not contain any statement, promise or forecast which is untrue or misleading;

64. Due diligence.

(1) 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 offer documents.

Relevant provisions of Merchant Bankers Regulations:

13. Code of conduct.

Every merchant banker shall abide by the Code of Conduct as specified in Schedule III.

Code of Conduct provided in Schedule III read with regulation 13 of the MB Regulations:

Clause 1. A merchant banker shall make all efforts to protect the interest of investors

Clause 2 Merchant banker shall maintain high standards of integrity, dignity and fairness in the conduct of its business

Clause 3 A merchant banker shall fulfill its obligations in a prompt, ethical, and professional manner.

Clause 4 A merchant banker shall at all times exercise due diligence, ensure proper care and exercise independent professional judgment

Clause 5.....

Clause 6 A merchant banker shall ensure that adequate disclosures are made to the investors in a timely manner in accordance with the applicable regulations and guidelines so as to enable them to make a balanced and informed decision.

Clause 7 A merchant banker shall endeavor to ensure that the investors are provided with true and adequate information without making any misleading or exaggerated claims or any misrepresentation and are made aware of the attendant risks before taking any investment decision.

Clauses 8-19.....

Clause 20. A merchant banker shall not make untrue statement or suppress any material fact in any documents, reports or information furnished to the Board.

16. Upon perusal of the allegation, submissions of the Noticee and other material available on record, findings of the present matter are recorded in succeeding paragraphs.

Issue – I:- **Whether the Noticee have violated Regulation 60(7)(a) and 64(1) of SEBI (ICDR) Regulations, 2009 and Regulation 13 read with Clause 1, 2, 3, 4, 6, 7 & 20 of Code of Conduct for Merchant Bankers specified under Schedule III in SEBI (Merchant Bankers) Regulations, 1992?**

FINDINGS

17. In this regard, based on the material available on record and on the submissions made by Noticee against these allegations, I note that the disclosures under reference, i.e., the fact that Equastone was a related party and the money transferred to it by ATL was a related party transaction is a material information and investors ought to know about the same while making their investment decision. Depriving investors of such important material information was indeed a serious issue. Further, as noted by Investigation, use of part of the Bridge loan as working capital by ATL was found to be not genuine and, hence the disclosure in this regard in the prospectus was held by Investigation as wrong. This again is a matter of very serious concern from the viewpoint of availability of true and correct information to investors with regard to such a material fact, through the prospectus of an IPO while making their investment decision. I further note that Investigation Report and the Order of SEBI WTM(MPB) *WTM/MPB/EFD-1-DRA-IV/67/2019 dated September 27, 2019* passed in the matter has treated the aforesaid wrong disclosures made in the prospectus as a very serious lapse and held the entity (ATL), its directors, CFO, company secretary and compliance officer primarily responsible for submitting wrong disclosure in the prospectus w.r.t utilization of bridge loan and not disclosing related party transaction with Equastone Properties Pvt Limited (Equastone), thus, violating SEBI (PFUTP) Regulations 2003, in addition to other Regulatory provisions. I also note that the Investigation and WTM Order have found that statutory auditor of ATL violated SEBI (PFUTP) Regulations 2003 by wrongly certifying the utilization of bridge loan amount of Rs, 20 crores in the prospectus of ATL. Thus, the act of wrong disclosures in prospectus has been treated as a fraudulent activity and ATL, its directors/CFO/CS/Compliance officer and statutory auditor have been held to be responsible for such fraudulent activity to the detriment of interest of investors.

18. I note that Investigation has found the Noticee, i.e., the BRLM failing to exercise due diligence while ensuring the veracity and adequacy in respect of the aforesaid disclosures made in the prospectus of IPO of ATL. I note Investigation has not charged Noticee under SEBI (PFUTP) Regulations 2003, same as other persons mentioned above. This brings into perspective the role of Noticee who, although not charged under the regulatory provision wrt fraudulent activity for wrong disclosures, was found to be responsible by Investigation for the wrong disclosures made in the prospectus by not applying proper due diligence in terms of making independent verification of the facts.

19. In this regard, I note that the Noticee has submitted that, it relied on the documents/undertakings given to it by ATL wherein there's no reference *whatsoever of Equastone in any of the documents, either as a related party or a part of any related party transactions. Further, Noticee has also stated that, it also relied on the statements / certificates given by the statutory auditors of the company, who is considered an "Expert" under The Companies Act, 1956 for the*

purpose of Financial Statements and Tax Benefits included in the RHP and Prospectus.. This plea of the Noticee is not acceptable. Here, I find Noticee only did primary level of due diligence by checking and relying upon the documents and information provided the ATL management and statutory auditor. No doubt, this first level check was its primary duty which it duly performed given the fact that the said information pertained to category of Financial information for which checking financial statements, annual reports, auditor report and relevant declaration/submissions/undertakings by ATL and its management/KMPs was necessary. However, the Noticee did not appreciate the fact that the disclosure with regard to use of bridge loan availed by ATL was a key material information keeping in mind the interest of investors and, hence, requiring further and additional level of independent verification of the facts by the BRLM. The Noticee being BRLM to the IPO, in carrying out its functions is expected to act in an independent and professional manner and should not rely only on the issuer company to provide it with information or accept the statements / certificates given by the statutory auditors. It is incumbent on the Noticee to find out everything that is worth finding out and cannot stop with passively reporting whatever is reported to it. It has to make an active effort to find out material information that would affect the interest of investors

20. With respect to inability of doing independent verification by Noticee in the instant case, Noticee has *inter-alia* stated that, *it also checks on the MCA website to see if any of the directors / promoters are associated with any other company details of which may not have been provided by the issuer. However, In the instant case, it has not checked on the MCA website as Ms. Malini Reddy, spouse of Mr. D. Ravikumar (Managing Director of Acropetal Technologies Limited), was not a director/promoter of ATL when the issue was being handled by Noticee / DRHP was being prepared / RHP was filed with the ROC and SEBI, there was no ground to take DIN Number of Ms. Malini or verify further. In the absence of a DIN Number, no data can be procured from the MCA Website and it is impossible to know the companies with which she was associated, Since the allegation that Equastone is a related party is only because Ms. Malini Reddy, wife of Managing Director was a majority shareholder this could not have been established by us by any amount of independent verification.*

21. However, from the reply of Noticee, I note that, Noticee was in possession of information that Ms. Malini reddy was part of promoter group as per the definition under the ICDR Regulations, 2009 and Equastone appears as a top ten shareholder holding 3% equity of ATL on a pre-Issue capital. Further, the contention of the Noticee is that, due to abovementioned reason, it has not taken DIN number of Ms. Malini and shown the inability of doing independent verification by checking the MCA website.

22. In this regard, I am inclined to agree with the Noticee that, in absence of DIN it was not able to check MCA website for Ms. Malini, but had Noticee independently verified the background of Equastone, even by accessing publically available information (like MCA database or any other such means), it would have known about the connection of Ms. Malini, wife of Shri Ravikumar and Equastone.

23. I also note that, the Noticee in its reply has reproduced para no. 167 of the Order No: WTM/MPB/EFD-1-DRA-IV/67/2019 dated September 27, 2019, passed by the Whole Time Member, Ms. Madhabi Puri Buch (hereinafter referred to as "**Order**") which also put onus on the issuer for non-disclosure/wrong disclosure. In this regard, it cannot be denied that issuer is primarily responsible for these wrong disclosures/ non-disclosures in the prospectus. However, role of the Noticee as the merchant banker was also vital.

24. Further, Noticee's contention that, it has checked 5 levels of diligence and that, the Board Minutes or any other document that was available for verification did not contain Equastone as a related party or a part of any related party transactions by Issuer Company and/or the reports which were issued by the statutory auditor, and therefore, it had not made further enquiries. I find that, as per regulation 64(1) of ICDR Regulations, it is the responsibility of merchant banker to exercise due diligence and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents. Therefore, I am of the opinion that, Noticee cannot take shelter behind the non-disclosure of related parties and transactions with such related parties given by the ATL and Statutory auditor as Noticee had failed to adopt the independent due diligence / care and relied only on documents provided by ATL and Statutory auditor.

25. With regard to the contention made by the Noticee and reference to para 171 of the WTM Order which was with respect to role of independent directors of ATL with respect to the non-disclosure and wrong disclosure made in the prospectus, I am of the opinion that, Noticee was not independent director but BRLM to the issue. Being BRLM it has to carry out the independent due diligence / care and not to rely passively only on documents provided by ATL and Statutory auditor. But, such reasonable diligence/care was not adopted by it. Further, the said lack of due diligence is not technical or trivial in nature, rather; the same was very important as discussed above.

26. With respect to working capital of Rs 13 crores transferred abroad, Noticee has submitted that*, ATL was a 100% Export Oriented Unit (EOU) and was operating from a Software Technology Park. The financial statements as given in pages 152, 170-172 (standalone) and 178, 193-195 (consolidated) of the RHP of Acropetal, which discuss the P/L statements and geographical break-up of revenue (as a part of Annexure 20 of the Financial Statements) indicate that*

almost 100% of the revenue earned by the company was from exports from USA, Middle East, Europe and Asia. Hence it is but natural that funds for working capital would be spent overseas. Further, Noticee has also stated that, Funds deployed as working capital were certified by the statutory auditor in the statement of funds deployed.

27. In view of the above submissions made by the Noticee, I find that, Noticee has gone by the principle of assumption and relied on the certification by statutory auditor. Noticee has not crosschecked that, where the funds of bridge loan were deployed and, if they were genuinely utilized towards construction of building and working capital. I am of the view that, as BRLM, the Noticee had all the rights to call for any reports, documents or information necessary from ATL to enable it to verify that the statements made in any communication by ATL to be true and to ensure that the same is not misleading and no omission has taken place in the disclosures. Had the Noticee called for bank statement of ATL/or had enquired about the property were advance was given for construction of building, it would have known that, Rs. 7 crore as mentioned in the audited statement of funds deployed as "advance towards construction of building" was in fact transferred to Equastone, which was a related entity of ATL. Further, had ATL called for any details / documentary evidence for usage of Rs 13 crore mentioned as "Towards working capital", it would have known that, the said amount was in fact transferred to companies abroad, which as per investigation report was observed as non – genuine and ATL did not comment on the same during the investigation. However, Noticee didn't play a pro-active role by looking into authenticity of audited Fund deployed statement. I observe in the reply of the Noticee that it has quoted SEBI WTM Order in the matter wrt role of Independent Directors in the matter; *wherein it is stated that "……Moreover, no material has been brought on record to show that why the transaction with Equastone would have raised red flags for the Directors especially when the money was transferred to Equastone….." which only shows that the Board Minutes or any other document that was available for verification did not contain Equastone as a related party to enable us to make further enquiries in this regard.* Here, it is to be noted that, as BRLM, it was role of Noticee to give importance to the materiality of the information involved and apply its independent judgment and effort to go beyond the documents provided before it by the issuer and its auditor. As mentioned above, a look at the bank statements of ATL would have given the Noticee the necessary red flags to ask further pertinent questions in this regard to the ATL management, its KMPs and its statutory auditor. I note that no such step or effort is demonstrated to have been taken by the Noticee. Instead, Noticee has mentioned in its reply that no amount of independent verification by it could have led to detection of such facts in absence of disclosure about the same by issuer or auditor. Such a reply reflects lack of application of professionalism in the instant matter by the Noticee. The Noticee ought to have demonstrated better professionalism, care and skill as a SEBI registered Merchant Banker.

28. I note that the Noticee has failed to be careful and steady in its duties as a Merchant Banker. In this regard, reliance is placed on the judgment of Hon'ble SAT, in the matter of Corporate Strategic Alliance Vs. SEBI passed on 29.03.2019, wherein it has been stated that, *"Making accurate disclosure is the cornerstone of the IPO process. No lapse of accuracy could be tolerated in this regard in as much as it is on the strength of the disclosures made in the prospectus that the investors take a decision to invest. The prospectus requires that full and fair disclosure of the state of affairs of the Company should be disclosed and that the Merchant Banker is required to conduct due diligence in respect of the disclosures. A Merchant Banker is appointed for the purpose of managing the issue of an IPO of a Company and, therefore, plays a fiduciary role by coordinating the activities of the Company, the Regulatory Bodies, and the Investors. The Merchant Banker is required to present the Company's information to the investors in a fair, concise and unambiguous form. By not furnishing full disclosures and in fact allowing false information to creep in the disclosures has misled the investors. Thus, we are of the opinion that the appellant did not exercise due diligence and did not disclose fairly in the offer document."*

29. the Reliance is also placed on judgement of Hon'ble SAT, in the case of M/s Keynote Corporate Services Limited (Appeal No. 84/2012 decided on 19.02.2014) where it was observed that *".....There is, perhaps, no need to go into any further to look into this appeal and various alibis offered by Appellant in not carrying out his due diligence since he has totally failed in his duties as BRLM/ Merchant Banker, in IPO of ESL. As a matter of fact he is responsible for adequacy and veracity of all disclosures in all documents pertaining to issue of IPO, since as BRLM/Merchant Banker solemn duties are cast on him and for justifying the same he has to play a pro-active role by looking into authenticity of various matters/disclosures/statements, etc. contained in prospectus; but Appellant does not appear to have even moved a little finger to carry out onerous duty cast on him as BRLM of the issue. BRLM has to bring out documents pertaining to IPO so that investors can take judicious and informed decisions on subscription to IPO and thus he is responsible for failing investor's trust in prospectus of ESL for IPO and for doing considerable higher damage to securities market"*.

30. In the same judgement of Hon'ble SAT, it is also held that "*Due Diligence on part of Merchant Banker does not mean passively reporting whatever is reported to it but to find out everything that is worth finding out. It is about making an active effort to find out material developments that would affect interest of investors. It is on faith that intermediary has conducted due diligence with utmost sincerity that investing public goes forward and decides to invest in a particular company…."*

31. Here reference may be also drawn towards observation made by Hon'ble Supreme Court of India, in the matter of Chander Kanta Bansal V. Rajinder Singh Anand (2008) 5 SCC 117, wherein it observed that *".....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 (18th 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 Pharses 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....."*

32. Taking support of aforesaid observations of Hon'ble SAT and Hon'ble Supreme court, it is needless to say that, Noticee, being BRLM to the issue is expected not to passively or mechanically disclose whatever is given to it by the issuer without exercising reasonable diligence to ensure adequate, true and fair disclosures are made in the RHP/Prospectus. It should have made independent enquiries and examinations as part of its due diligence exercise to ensure that disclosures made in the offer documents are true, complete and adequate. I find that nothing has been brought on record by the Noticee to demonstrate that it has done any independent examination regarding verifying the correctness of the information to be disclosed in the prospectus. Thus, I am of the opinion that the Noticee cannot merely escape its responsibility by shifting the liability on issuer/auditors. It is further noted that the Noticee had merely relied on an undertaking and information given by the issuer company/auditor instead of verifying the facts with supporting documents. Since, the role of a merchant banker in IPO is also very vigorous as the merchant banker authenticates the correctness of the information disclosed in the prospectus by enabling the investors to take informed decision with respect to their investments.

33. In view of the above, I find that the Noticee have violated regulation 60(7)(a) and 64(1) of ICDR Regulations, regulation 13 r/w clause 1, 2, 3, 4, 6, 7 and 20 of Code of Conduct for merchant bankers specified under Schedule III in Merchant Bankers Regulations.

<u>Issue</u> – <u>II</u>:- Whether the Noticee is liable for imposition of monetary penalty under Section 15HB of the SEBI Act?

34. In this connection I would like to refer to the order of The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the*

contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".

35. Thus, in light of the above, it is noted that failure on part of the Noticee in carrying out due diligence in a fair and proper manner has disturbed the high standards of integrity and dignity of the securities market, thereby depriving investors of material information to enable them to take well informed decision. Considering the aforesaid facts and circumstances of this case, I am of the opinion that this case deserves imposition of penalty under section 15HB of the SEBI Act upon Noticee which reads as below –

15HB Penalty for contravention where no separate penalty has been provided.

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

Issue – III:- If so, what quantum of monetary penalty should be imposed on the Noticee considering the factors stated in section 15J of SEBI Act, 1992 :-

36. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under:-

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default
(b) the amount of loss caused to an investor or group of investors as a result of the default
(c) the repetitive nature of the default

37. I find that Investigation did not bring out any disproportionate gain or unfair advantages to the Noticee. I also do not find in the Investigation any specific degree or quantum of loss to investors attributable to the role of Noticee (merchant banker) in the matter. I have also noted that, The role of merchant banker in the instant case is limited to its non-professional approach of not applying better quality of due diligence while making disclosures in prospectus of the IPO of ATL for enabling investors to make well informed decision to invest

their money in the IPO of ATL. Further, it cannot be denied that it is primarily responsibility of issuer that investors receive full and correct disclosures by way of the Prospectus during the IPO process. Moreover, in the instant case, the statutory auditor of ATL was found to have wrongly certified the utilization of the bridge loan amounting to Rs. 20 Crore by ATL. I also observe that investigation has noted that no violation of PFUTP Regulation was committed by the Noticee in respect of its role towards the wrong disclosures made in prospectus of the IPO. Further, as regard Past Action, if any, taken by SEBI against the Noticee for its merchant banking activities, the Investigation notes that No regulatory action had been taken by SEBI in the past as per database maintained by SEBI suggesting it was the first time any Regulatory action was being initiated against the Noticee.

ORDER

38. After taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, read with Rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lacs only) on the Noticee viz. Saffron Capital Advisors Pvt. Ltd in terms of section 15HB of the SEBI Act, for the violation of the provisions of regulation 60(7)(a) and 64(1) of ICDR Regulations, regulation 13 r/w clause 1, 2, 3, 4, 6, 7 and 20 of Code of Conduct for merchant bankers specified under Schedule III in Merchant Bankers Regulations. In my view, the above penalty is commensurate with the level of failure committed by the Noticee in the case.

PENALTY PAYMENT OPTIONS

39. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

40. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department 1-DRA-IV), the Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051" and also send an email to "tad@sebi.gov.in":-

1. Case Name :	
2. Name of Payee :	

3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payment is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

41. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

42. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : December 18, 2020 **VIJAYANT KUMAR VERMA**
Place : Mumbai **ADJUDICATING OFFICER**