WTM/MB/IVD/ID7/12358/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

MS. MADHABI PURI BUCH, WHOLE TIME MEMBER

Order

Under regulation 27 of SEBI (Intermediaries) Regulations, 2008

In Re: SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, SEBI (Merchant Bankers) Regulations, 1992

In the respect of

Sl. No	Name	SEBI Registration No.
1.	Saffron Capital Advisors Pvt. Ltd.	INM000011211

In the matter of Acropetal Technologies Limited

BACKGROUND OF THE CASE:

1. Acropetal Technologies Limited (herein after referred to as "**ATL"** / "**Company"**) came out with an Initial Public Offer (herein after referred to as "**IPO**") for issue of 1,88,88,889 equity shares of face value Rs.10/- each at a price of Rs. 90/- per share, aggregating to Rs. 170 Crore during February 2011. ATL was listed on the Bombay Stock Exchange Limited (**BSE**) and the National Stock Exchange Limited (**NSE**) on 10/03/2011. Saffron Capital Advisors Private Limited (hereinafter referred to as "**Saffron/Noticee**") was the Book Running Lead Manager (**BRLM**) with regard to the IPO. The bidding for the issue was open from 21/02/2011 to

24/02/2011 and the issue was oversubscribed 1.19 times. The scrip opened at Rs. 92/- and Rs. 130/- and touched a high of Rs.140/- and Rs. 150/- on NSE and BSE respectively.

2. Securities and Exchange Board of India (herein after referred to as "**SEBI**") conducted an investigation in the matter. 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**")

3. During the investigation it was observed that Saffron was the BRLM with regard to the ATL-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. Brief details of observations and allegation in the investigation report (hereinafter referred to as ("**Investigation Report/IR**") are as follows:

3.1. ATL has availed a Bridge Loan facility of Rs. 20 crore from United Bank of India for meeting expenses forming part of the objects of the issue and certified by the statutory auditor, M/s K. Gopalakrishnan & Co, Chartered Accountants that it was utilized till 21/01/2011, for advance towards construction of building of Rs.7.00 Cr and working capital of Rs.13.00Cr. However, on analysis of the bank statement of ATL the utilization of bridge loan Rs. 20 crore was as follows:

Details	**Amount** (Rs. Crore) approx.)
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**

3.2. It was observed that Ms. 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.

3.3. Equastone being an entity promoted by Ms. Malini Reddy (Malini) i.e. wife of Promoter & Chairman and Managing Director (CMD) Mr. Ravikumar and also in promoter group of ATL was related entity of ATL and also the employees of ATL (viz. Prashanth Kumar and Madhava Reddy) were the directors in Equastone. Therefore Equastone being related party, the transaction of transfer of 7 crores to Equastone, being a related party transaction was not disclosed by ATL in its prospectus. 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.

3.4. It was observed that 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.

3.5. Further, it was observed that the remaining Rs.13 crore was transferred to abroad companies, for which no reason whatsoever could be provided by ATL. Hence, it

was observed that entire transaction was not genuine and disclosure as appearing in the prospectus was false

3.6. In view of the above it was alleged that, Noticee has failed to exercise due diligence to ensure the veracity and adequacy of disclosure made in the prospectus as required under Regulation 64(1) of SEBI (ICDR) Regulations, 2009 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.

4. In light of the above, SEBI initiated enquiry proceedings against the BRLM of IPO viz. Saffron Capital Advisors Private Limited as prescribed under Regulation 27 of Intermediaries Regulations, 2008, for the alleged violations of Regulation 60(7)(a) and Regulation 64(1) of SEBI (Issue of Capital Disclosure Requirements) Regulations, 2009 (hereinafter referred to as "**ICDR**"), Regulation 13 read with Clause 1,2,3,4,6,7 and 20 of the Code of Conduct for Merchant Bankers specified in Schedule III in SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as "**Merchant Banker Regulation**"). Designated Authority (DA) was appointed to inquire and adjudge the alleged violations and to conduct an enquiry with respect to dealings of Saffron Capital Advisors Private Limited as a BRLM/Merchant Banker, in the matter of IPO of ATL.

5. After concluding the enquiry and taking into consideration the facts and circumstances of the case, in terms of Regulation 27 of SEBI Intermediaries Regulation, DA vide its Report dated December 11, 2020, found that, the Noticee has failed in due diligence and independent professional judgment on the veracity and adequacy of the disclosure in the prospectus with respect to the Related Party Transaction and the utilization of the bridge loan and thus found non-disclosure/wrong disclosure in the prospectus and recommended that the violation

of the Noticee may be visited with the action of prohibiting Noticee to take any new assignment for the period of 15 days.

6. Pursuant to this, a post enquiry Show Cause Notice (P-SCN) dated January 21, 2021 was issued to the Noticee, under Regulation 28 (1) of SEBI (Intermediaries) Regulations, 2008, to show cause as to why action, as recommended by the DA or any other action as considered appropriate should not be taken against the Noticee. A copy of the DA's Report was also forwarded to the Noticee along with an advice to file reply, if any, within 21 days from the date of receipt of the notice.

7. Subsequently in response to the P-SCN, Noticee vide letter dated February 18,2021, made the following main submission:

7.1. Noticee was the BRLM to the IPO of ATL and submitted the due diligence certificate.

7.2. With reference to the observation on wrong disclosure/non-disclosure made in the prospectus, Noticee has carried out due diligence meticulously and thoroughly as per requirement set out in year 2010 and assured of no non-disclosure or wrong disclosure in the offer document.

7.3. Noticee denies the allegation of transaction for transfer of Rs. 13 crores were not genuine and mentioned that they received certificate from M/s K. Gopalkrishnan & Co., statutory auditor of ATL that, company has utilized bridge loan availed from UBI to pay advance towards construction of building of Rs. 7 crores and working capital of Rs. 13 crores. Noticee has no reason to question auditor's certificate. Further, utilization statement of bridge loan did not raise suspicion as Equastone was one of the suppliers for building contract and ATL was 100% export oriented unit and working capital payment would be to meet the expenses at these centres as almost 100% revenue is earned from export and hence it was natural that funds were remitted abroad as working capital. The same has been

classified as working capital by the auditor in the statement of deployment. The Noticee has made reference to Hon'ble SAT order in the matter of corporate strategic alliance vs. SEBI where Hon'ble SAT held that, *"……The balance sheet has been duly audited by the statutory auditor and accepted by the Income Tax Authority. It is not open to the AO to question the entries in the balance sheet. The AO is not an expert to judge the accounting figures and hold as to which entry should come under "Fixed Assets" or under "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…..". Have stated the facts corroborated with the disclosures in annual report for the previous 5 years.*

7.4. Ms. Malini Reddy, spouse of Mr. Ravikumar (Managing Director of ATL) was not director of ATL during the issue tenure. Since she was neither director nor the promoter of the company and only part of Promoter group, hence there was no ground to take her DIN or verify further. In the absence of DIN no data can be procured from MCA website and impossible to know which company she is associated as it relates to year 2010, therefore, Equastone is related party through Ms. Malini Reddy wife of Managing Director of ATL could not have been established by any independent verification. Also the annual report and auditor certificate in the prospectus have not brought out Equastone as related party. The Noticee has made reference to the Order WTM/MPB/EFD-1-DRA-IV/67/2019 dated September 27, 2019, 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…"* The Board Minutes or any other document that was available for verification did not contain Equastone as related party to make any further enquires. Issuer Company being primarily responsible for the disclosure of related party and related party transactions and, also the fact

that statutory auditor, being the auditor since incorporation of ATL in April 2001, did not disclose Equastone as related party in financial statements, Noticee believed it was beyond reasonable diligence to suspect that Equastone was related party.

7.5. Noticee submitted that, Equastone appeared 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, as further enquiries are made only in respect of significant shareholders in the company. Equastone did not meet the criteria as it held only 3% equity of ATL (pre-Issue basis).

7.6. Due Diligence certificate was submitted, Noticee conducted all verification of records and performed duties as mandated in the code of conduct for merchant banker with utmost integrity and honesty and therefore denied the allegations. Noticee has made all efforts to provide material and true information to the investors and since there was no requirement to probe further, have not asked for any additional information.

7.7. Merchant Banker cannot be expected to verify facts and information beyond a reasonable means and it is already confirmed in the DA report that Noticee has verified minute books, annual report, declaration of promoters and statement of auditors associated with ATL since incorporation.

7.8. The Noticee has denied the parlance drawn in the DA Report with reference to Hon'ble SAT order in the matter of Keynote Corporate Services Limited on merchant banker responsibility, as the utilization of bridge loan was disclosed in the prospectus and there was no material to suggest that Equastone was related party, in Minutes of Board Meeting, Annual Report and Statutory Auditor's reports, related party disclosures, declaration / submissions / undertakings by ATL and its management/KMPs..

7.9. Noticee has mentioned that its positions has been vindicated, as the expert on whose certificate the BRLM is supposed to rely on as per the established position and market practice/custom, turned out to be wrongly given / inaccurate / incorrect, in the investigation by SEBI post IPO. Hence Noticee neither provided any wrong disclosure nor made any non-disclosure in offer document. Further, as additional due diligence Noticee insisted the deployment certificate by the statutory auditor, whereas the regulation mentions certificate from any Chartered Accountant.

7.10. Noticee has submitted that it has exercised due diligence and not violated any regulations. Further ever since it has obtained the merchant banker license in year 2008, has not been involved in any adjudication proceedings or matter involving serious offences/frauds and no penalties have been imposed for any such matters.

7.11. The Noticee denied all the violations against it and has requested not to prohibit them from taking new assignment for a period of 15 days as recommended by DA.

Findings and consideration

8. Based on the facts, discussions and material available on record and the submissions of the Noticee, the DA has found that the Noticee has violated the provisions 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. DA has recommended that the Noticee may be prohibited to take any new assignment for the period of 15 days.

9. I have considered the report submitted by the DA, the P-SCN issued to the Noticee, oral and written submissions of the Noticee along with the documents

contained therein and other material available on record. I note that the issue that arises for consideration in the present matter is whether there was failure by BRLM to do independent professional judgment and due diligence for the non-disclosure and wrong disclosure in the prospectus with respect to related party transaction and utilization of the issue proceeds towards working capital requirement, in the prospectus of ATL.

10. I note that the Noticee has vehemently contested all observations brought out in the Enquiry Report by the DA and denied all the allegations against the Noticee.

11. In order to proceed further, it is relevant to reproduce the applicable provisions as below:

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.

Part A of Schedule VIII IX (B) (12) Related Party Transactions:

The issuer shall disclose the following details of related party transactions and make disclosures in accordance with the requirements of Accounting Standard (AS 18) "Related Party Disclosures" issued by the Institute of Chartered Accountants of India:

(a) Information with respect to transactions or loans between the issuer and

(i) …

(ii)…

(*iii) individuals owning, directly or indirectly, an interest in the voting power of the company that gives them significant influence over the issuer, and close members of any such individual's family;*

(iv) key managerial personnel, that is, those persons having authority and responsibility for planning, directing and controlling the activities of the issuer, including directors and senior management of companies and close members of such individuals' families;

(v) enterprises in which a substantial interest in the voting power is owned, directly or indirectly, by any person described in [(iii) or (iv)] or over which such a person is able to exercise significant influence and includes enterprises owned by directors or major shareholders of the issuer

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.

Regulation 27 of the Intermediaries Regulations

Action in case of default.

27. After considering the representations, if any, of the noticee, the facts and circumstances of the case and applicable provisions of law or directions, instructions or circulars administered by the Board the designated authority shall submit a report, where the facts so warrant, recommending, –

(i) suspension of certificate of registration for a specified period;

(ii) cancellation of certificate of registration;

(iii) prohibiting the noticee to take up any new assignment or contract or launch a new scheme for the period specified in the order;

(iv) debarring a principal officer of the noticee from being employed or associated with any registered intermediary or other registered person for the period specified in the order;

(v) debarring a branch or an office of the noticee from carrying out activities for the specified period;

(vi) warning the noticee."

12. In view of the above, it is noted here that, Regulation 60(7) of ICDR Regulations makes it obligatory on the issuer to not issue any advertisement or research that is not true, fair and it should not be manipulative or deceptive or distorted. Schedule VIII clearly indicates that the means and sources of financing including details of bridge loan and related party transactions have to be disclosed in the Prospectus. Further, Clause (IX)(B)(12) (a)(v) Part A of Schedule VIII of ICDR Regulations, places the onus on Issuer to make disclosure of related party transactions. However, even though the onus is on the issuer company to make the disclosure, Regulation 64 of ICDR Regulation mandates the BRLM/Merchant Banker that it, *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.*

Related Party Transaction Disclosure

13. As per ICDR Regulations, Issuer Company shall disclose transaction with related party in accordance with the requirements of Accounting Standard (AS 18) in the prospectus as per Part A of Schedule VIII IX (B) (12) which brings out that information with respect to transactions or loans between the issuer with an enterprises in which a substantial interest in the voting power is owned, directly or indirectly by any person (*close members of such individuals' families)*, over which such a person is able to exercise significant influence and includes enterprises owned by directors or major shareholders of the issuer.

14. It was also noted form the MCA website, it was noted that Ms. Malini Reddy, wife of Promoter/CMD of ATL, Shri Ravikumar, and also in the promoter group of ATL, was the major Promoter of Equastone and was holding 90% shareholding and additionally other Directors were also employees of ATL, namely Shri Prashanth Kumar and Shri Madhava Reddy. From the KYC details of Equastone submitted

by United Bank of India, it was observed that the authorized signatory to the bank accounts of Equastone was Shri D Vedavyasa Rao, Head- Accounts –ATL. At the investigation stage, Ms. Malini Reddy was advised to confirm her role in Equastone. She had submitted that in November, 2006, she had resigned as the Director of Equastone and transferred the entire shareholding in Equastone to Shri Prashanth Kumar. She had also submitted a copy of Annual Return of Equastone for the year 2007 which she claimed to have filed with MCA showing transfer of shares of Equastone in favour of Shri Prashanth Kumar. However, it is observed from the MCA website that the said filing was done only on July 25, 2011. Therefore the contention of Ms. Malini Singh on the transfer of the share during 2007 is not acceptable. I also note that, as per disclosure in the prospectus in Annexure 18, Ms. Malini Reddy was related party to ATL in the capacity as Promoter Group (Immediate Relative of promoter/CMD).

15. In view of the above facts, Equastone is a related entity of ATL / Shri Ravikumar as wife of Shri Ravikumar was the majority shareholder in Equastone. Therefore, it is held that fund transactions with Equastone is Related Party Transaction, which was not disclosed by ATL in its Prospectus. Additionally, it was also noted that employees of ATL (viz. Shri Prashanth Kumar and Shri Madhava Reddy) were the Directors in Equastone during the period 2010-11.

16. The Noticee has submitted that, *Ms. Malini Reddy was not a director of Acropetal when the issue was being handled / DRHP was being prepared / RHP was filed with the ROC and SEBI. Noticee was informed that she is more a housewife and never takes part in any company activities. Since she was not a director or a promoter of the company and 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 no data can be procured from the MCA Website and it is impossible to know the companies*

with which she was associated, as the MCA website was different during 2010. I note that the Noticee has also contented that, it made 5 level of due diligence through verifying Annual Report for 5 years, Minutes of the Board Meeting for 5 years, Statutory Auditor's Certificate/Statement and declaration of management of ATL and promoter and promoters group, where no reference or disclosure of RPT with Equastone was made nor any material or circumstance was on record to raise any red flag. Noticee has also submitted that as Equastone was only appearing as top 10 shareholder with 3% on pre-issue capital and since the holding was less than 5% no further inquiries was made.

17. At this stage, it needs to be further seen whether any redflag was there to indicate failure of due diligence to detect that Equastone is a related party at the relevant point of time.

18. Apart from the due diligence through Annual Report for 5 years, Minutes of the Board Meeting for 5 years, Statutory Auditor's Certificate/Statement and declaration of management of ATL and promoter and promoters group, Noticee has also submitted the interest certificate of Mr. D. Ravi Kumar under section 299 of the companies Act 1956, obtained during the due diligence. I note that section 299 of the Companies Act 1956 mandate *"Procedure, etc., where director interested"* containing "Disclosure of Interests by Director" which read as, *Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, shall disclose the nature of his concern or interest at a meeting of the Board of Directors.* Further section 297 of the Companies Act 1956 requires to obtain *Board's sanction to be required for certain contracts in which particular directors are interested* mentioning that, *Except with the consent of the Board of Directors of a company, a director of the company or his relative, 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. However, as per the interest certificate given by Mr D. Ravi Kumar for FY ending 31/03/2010 to the Board of Directors of the Company, no declaration of Equastone as interested entity through Ms. Malini Reddy was made.

19. The Declaration dated March 10, 2010 and February 25, 2011 Mr. D Ravi Kumar has declared that, *"I am not interested in any loan or advance given by the Company to any Person(s)/ Company(ies) nor am I beneficiary of any loan or advance.*

20. Further Mr. D Ravi Kumar vide declaration dated February 25, 2011 to the Noticee has given an undertaking which inter-alia contains the following:

    20.1. Save as stated in the Prospectus, neither I nor any person forming part of Promoter Group, nor any of my relatives nor any of Directors of our Company nor any of the group companies are directly or indirectly deemed to be interested in any of the 'Objects of the Issue' as stated in the Prospectus in what so ever nature and in whatsoever capacity.

    20.2. Save as stated in the Prospectus, neither I nor any person forming part of Promoter Group, nor any of my relatives nor any of Directors of our Company nor any of the group companies are directly or indirectly deemed to be interested in any of transactions executed with Debtors or Suppliers of the Company.

21. Based on the above facts it is noted that Mr. D Ravi Kumar has deliberately concealed the details of Equastone as related entity and Ms. Malini Reddy connection to the Equastone. Further based on the above there are no red flags

raised for the Noticee to further delve into statements on the related entities and related party transactions.

Wrong Disclosure on Utilisation of 13 Crores from the Bridge Loan

22. Regarding transaction for transfer of Rs. 13 crores it is alleged that, if the Noticee had played a pro-active role by looking into authenticity of audited fund deployed statement and the bank statements, Noticee would have known that, the said amount was in fact transferred to companies abroad and is non-genuine. I note here that except, lapse / flaw in the process of independent judgment by the Appellant, there is no allegation of any collusion of the Appellant with the Issuer Company or Auditor. Noticee in this respect has submitted that they received certificate from M/s K. Gopalkrishnan & Co., statutory auditor of ATL that, company has utilized bridge loan availed from UBI to pay working capital of Rs. 13 crores and Noticee has no red-flags to question auditor's certificate. At this stage, it needs to be seen whether any red flags existed for the transfer of Rs.13 crore to abroad companies as not genuine and therefore the disclosure as appearing in the prospectus in this respect was false. In this regard, perusal of the prospectus shows that ATL has disclosed that the working capital requirement is majorly towards sundry debtors, other current asset and creditors and provisions. Therefore, given the statement by the ATL and Auditor in the prospectus enumerating the purpose for which working capital is needed, it is difficult to conclude on preponderance of probability basis, that there existed red flags on the aspect of whether utilisation of the bridge loan is in the nature of working capital requirement or not. I also note that the Noticee has submitted that the deployment of funds certificate was also provided by the Statutory Auditor which classified the utilization of the funds for working capital. Further, I also note that there are no red flags brought out through the Minutes of the Board Meeting, Statutory Auditors Report, Annual Report and various undertaking/certification of KMP or Auditors,

with respect to the 13 crores utilisation during the IPO opening, warranting any further verification. I am of the view on preponderance of probability basis, that no red flags were noticeable in the given circumstances, throwing themselves up through the materials presented before the Noticee. Therefore, in view of those circumstances, this did not lead the Noticee to look at the bank statement for further verification. Therefore, it is difficult to conclude that there were red-flags which could have alerted the Noticee to do further independent profession judgement looking into the bank statements.

23. At this juncture, it is relevant to mention and rely the Hon'ble SAT order in the matter of SEBI vs Almondz Global Securities Ltd. dated 13.05.2016, where the roles and responsibility of the merchant banker, requirement of due diligence, and independent verification has been determined in quite similar matter. The relevant extract of the Hon'ble SAT order is reproduced as follows; ….. *It is settled law that due diligence means reasonable diligence expected from a Merchant Banker. A Merchant Banker cannot be expected to start a due diligence exercise with a presumption of fraud or mischief to be committed by a company whose IPO is to be issued through the Merchant Banker. A Merchant Banker cannot be expected to act like an investigating agency and start with a note of suspicion as regards the bona fides of the company, on whose behalf it is entrusted with the task of drafting and preparing the DRHP, RHP and the Prospectus, etc. After the signing of a Memorandum of Understanding by the MB with the Issuer Company to draft and finalise the offer documents required for the IPO, a relationship of trust and confidence ensues between the two and cannot be unilaterally breached by any of the parties from the date of signing of the Memorandum of Understanding till the conclusion of the IPO…….*

……The Issuer Company is primarily responsible for making complete and accurate disclosures in the Offer Documents through the MB. Undoubtedly, the

MB has to employ its own independent Due Diligence, but in effect an MB relies upon the information / documents / records furnished by the Issuer Company to be included in the Offer Documents at various stages of the IPO. It is pertinent to mention here that the MB will conduct its due diligence based on the material brought before it by the Issuer Company, but it cannot be expected to perform this duty in a vacuum when information is not made available to it.

"…*This takes us once again to the very principle of due diligence. The diligentia that is expected of a Merchant Banker in a given case is such care as would be taken by a reasonable person. It would be the diligence or care a reasonable person would employ in a given situation. Degree of such care or diligence would, undoubtedly, differ from case to case and no straight-jacket formula can be prescribed by law. As already noted, the principle of due diligence is, by nature, incapable of being defined in precise terms and has, therefore, been left open or flexible to be determined in each case as per the existing facts and circumstances. Hon'ble Supreme Court in the case of "Chander Kanta Bansal Vs. Rajender Singh Anand reported in 2008 (5) SCC 117"…. that due diligence in law means reasonable diligence and doing "everything reasonable, not everything possible".*

24. In view of the facts and circumstances of the case and relying on the Hon'ble SAT and Hon'ble Supreme Court Order, I also note that, the materials before this proceedings have not bought out, a) any disproportionate gain or unfair advantages to the Noticee in the matter and b) any regulatory action taken in past by SEBI against the Noticee for its merchant banking activities. It is also noted that the instant disclosure of utilisation was supported by the statutory auditor's certification an expert in the financial statements, who were associated with the ATL since incorporation and also that there were on the face of it, no red flags which would have put the Noticee on alert to extend the degree of reasonable due diligence on perusal of the available Minutes of the Board Meeting, Statutory

Auditors Report, Annual Report and various undertaking/certification of KMP or Auditors.

25. I note that DA had recommended that the Noticee may be prohibited to take any new assignment for the period of 15 days for the violation of Noticee. In view of the facts and circumstances of the instant proceedings brought out in the above paragraphs, there were no red flags raised to further delve into statements, undertaking, declaration, auditors and KMP certification, etc.by the Noticee.

ORDER:

26. Thus, in view of the foregoing, I, in exercise of the powers conferred upon me under Regulation 27 of SEBI (Intermediaries) Regulations, 2008, hereby dispose of the Show Cause Notice without any direction.

27. The order shall come into force with immediate effect.

28. A copy of this order shall be served on the Noticee and upon all recognized Stock Exchanges and Depositories.

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Date: June 29, 2021 **MADHABI PURI BUCH**

Place: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA