

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. : Order/VV/NK/2021-22/15778-15795]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SCR(R) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

Noticee No.	Name of Noticee	PAN/CIN/DIN of Noticee
1.	Acropetal Technologies Ltd	AADCA1623M
2.	Ravi Kumar Doraiswamy	ACNPK9304L
3.	Mohan Hosahally Ramakrishna	AHQPR8898G
4.	Subrahmanya Dandala Kannayya Reddy	AANPR6123L
5.	S. Sudheer	-
6.	Shobha Sudhakar Acharya	AJLPA3219K
7.	Jamili Jalaiah	ACTPJ7423K
8.	Interbrew Networks Ltd	-
9.	Vision Info Inc	-
10.	Corus Limited	-
11.	HDK International Pvt. Ltd.	AABCH7897J
12.	SK Universal Pvt. Ltd.	AAKCS4399D
13.	Viraj Mercantile Pvt. Ltd.	AADCV3852H
14.	Maars Software International Ltd.	AAACM4527H
15.	Aarm Finser India Limited	AABCP0367K
16.	Ecologix Knowledge Solutions Pvt. Ltd.	AACCE0264H
17.	Equastone Properties Pvt. Ltd.	AABCE9232C



Noticee No.	Name of Noticee	PAN/CIN/DIN of Noticee
18.	Virtus Tech Pvt. Ltd.	AADCV2746E

IN THE MATTER OF ACROPETAL TECHNOLOGIES LIMITED

BACKGROUND

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. The issue was graded by ICRA Limited and assigned a grade of 3/5, indicating average fundamentals. The bidding for the issue was open from 21/02/2011 to 24/02/2011 and the issue was oversubscribed 1.19 times. ATL was listed on the exchanges BSE and NSE on 10/03/2011. 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**") took up the preliminary investigation in the IPO of Acropetal Technologies Limited on February 08, 2012. During the collection of information, it was noted that the response of the ATL to SEBI's letter was found to be incomplete/contradictory. ATL failed to submit documentary evidences and certain entities did not reply to SEBI's letters. Since ATL and other entities did not co-operate during preliminary investigation, a formal investigation was proposed to be carried out in the matter of IPO of ATL.
3. SEBI conducted an investigation in the matter 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**"), SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as "**Merchant Bankers 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.

4. An extensive investigation was carried out by SEBI. The said investigation included several entities, including vendors, suppliers, brokers, merchant banker, officials, etc. and detailed analysis carried out of their bills, delivery challans, submissions in Prospectus, bank transactions, trade data, etc. and finding connection amongst them. Further, investigation revealed a *prima facie* non-utilisation of IPO proceeds, deviation from the objects of the issue, 11 entities acting hand-in glove with ATL and also were party to the actions and deeds of ATL to divert the IPO money and not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL, wrong disclosure in the prospectus, wrong disclosures to NSE & BSE regarding utilization of IPO proceeds and non-disclosure of material information. Many entities failed to furnish information called for through SEBI summons and some entities failed to appear in person before the Investigating Authority as per SEBI summons. Investigation was concluded and the action was approved by the Competent Authority on March 27, 2017.

5. Pursuant to the Conclusion of Investigation on March 27, 2017, SEBI initiated adjudication proceedings against aforementioned Noticees:

- a) under section 15 HA of SEBI Act for the alleged violation of section 12A(a), (b) and (c) of SEBI Act read with Regulation 3 (b), (c), (d), 4(1) of PFUTP Regulations by ATL, Ravi Kumar Doraiswamy (Chairman and Managing Director of ATL) (hereinafter referred to as “Ravi kumar”) and independent directors of ATL, viz., Mohan Hosahally Ramakrishna (hereinafter referred to as “Mohan”) and Subrahmanya Dandala Kannayya Reddy(hereinafter referred to as “Subrahmanya”).
- b) under section 23E of SCRA for the alleged violation of clause 43 and 43A(1) of the Listing Agreement by ATL.



- c) under section 15HA of SEBI Act for the alleged violation of section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(b), (c), (d), 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations and regulation 57(1), 60(7)(a) of ICDR Regulations by ATL, Ravi Kumar Doraiswamy, Mohan Hosahally Ramakrishna, Subrahmanya Dandala Kannayya Reddy, S Sudheer, Shobha Sudhakar Acharya and Jamili Jalaiah.
- d) under section 15 HA of SEBI Act for the alleged violation of section 12A(a), (b) and (c) of SEBI Act read with Regulation 3 (b), (c), (d), 4(1) of PFUTP Regulations by Interbrew Networks Ltd., Vision Info Inc, Corus Limited, HDK International Pvt. Ltd., SK Universal Pvt. Ltd., Viraj Mercantile Pvt. Ltd., Maars Software International Limited, Aarm Finser India Limited, Ecologix Knowledge Solutions Pvt. Ltd., Equastone Properties Pvt. Ltd. and Virtus Tech Pvt. Ltd.
- e) under section 15A(a) of SEBI Act for the alleged violation of section 11C(2) and 11C(3) of SEBI Act by HDK International Pvt. Ltd., SK Universal Pvt. Ltd., Viraj Mercantile Pvt. Ltd. and Maars Software International Limited.

APPOINTMENT OF ADJUDICATING OFFICER

6. Shri Sahil Malik (hereinafter referred to as "erstwhile AO") was appointed as the Adjudicating Officer (**AO**) by SEBI vide communication order dated July 07, 2017 under Section 19 of the SEBI Act read with Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") and Section 23I of SC(R) Act read with Rule 3 of Securities Contracts(Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005(hereinafter referred to as "**SCR Rules**") to conduct adjudication proceedings *inter-alia* in respect of the Noticees, in the manner specified under Rule 4 of the Adjudication Rules and SCR Rules read with Section 15-I (1) and (2) of the SEBI Act and with Sections 23-I (1) and (2) of the SC(R) Act, and if satisfied that penalty is liable, to impose such penalty deemed fit in terms of Rule 5 of the Adjudication Rules and SCR Rules in terms of Section 15A(a), 15HA of the SEBI Act and Section 23E of the SC(R) Act. Subsequently upon transfer of Shri Sahil Malik, the undersigned has been appointed as AO by SEBI in the matter vide Order dated August 13, 2019, to inquire into and adjudge, the aforesaid violations alleged to have been committed by the Noticees.



7. Based on the findings made during the investigation, A common Show Cause Notice dated December 15, 2017 (hereinafter referred to as “**SCN**”) was issued to the Noticees in terms of Rule 4 (1) of the Adjudication Rules read with Section 15-I of the SEBI Act and under Rule 4 of SCR rules read with Section 23I of SC(R) Act, to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15HA and 15 A(a) of the SEBI Act, 1992 and Section 23E of the SC (R) Act, 1956 for the violations alleged to have been committed by Noticees by erstwhile AO.
8. Parallel 11B proceedings were also initiated against Noticees and final order was passed against Noticees by Hon’ble Whole Time Member of SEBI (hereinafter referred to as “**WTM**”) on September 27, 2019.
9. The allegations levelled against the Noticees in the SCNs are summarized as follows:-
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. The issue was graded by ICRA Limited and assigned a grade of 3/5, indicating average fundamentals. The bidding for the issue was open from 21/02/2011 to 24/02/2011 and the issue was oversubscribed 1.19 times. ATL was listed on the exchanges BSE and NSE on 10/03/2011. 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. The objects of issue as per its prospectus dated 25/02/2011 are stated in table below:

Sr. No.	Particulars	Amount (as per the prospectus)
A.	Proposed Acquisitions	5500.00
B.	Setting up of Software Development Centre and Corporate Office	2618.67
C.	Expansion & Establishment of overseas offices	1944.96
D.	Part Repayment of Term Loans	2500.00
E.	Additional Working Capital requirements	2500.00
F.	Public Issue Expenses	1500.00
G.	General Corporate Purposes	436.37
TOTAL		17,000.00



Deviation from the objects of the issue

3. During the course of investigation, ATL was advised to provide complete details on the utilisation of the IPO proceeds with regard to the claimed acquisitions, inter alia including specific date(s) of acquisitions, number of shares purchased, name of sellers etc. ATL, vide its letter dated 14/02/2013 inter alia submitted following details:

Name of Acquired Company	Amount (Approx Rs. Cr.)	No. of shares acquired (%)	Remarks
Kinfotech Pvt Ltd	5.10	510444 (51%)	Domestic Acquisition
Mindriver Information technologies P Ltd	9.50	439960(100%)	Domestic Acquisition
Line Beyond Inc	22.29	448415.56 (100%)	Overseas Acquisition
Optech Consulting Inc*	26.78	1000 (100%*)	Overseas Acquisition
Total	63.67	-	-

*70% from Corus Ltd and 30% from Vision Info Inc.

Proposed Acquisitions (Rs. 55 crore)

Kinfotech Private Limited (Kinfotech)

4. As per prospectus of ATL, Kinfotech was a Promoter Group entity with Shri Ravi Kumar Doraiswamy, Chairman and Managing Director (herein after referred to as "**Shri Ravikumar**") holding 3,49,556 shares (34.96% of share capital) of Kinfotech. Vide its letters dated 11/06/2012 & 14/02/2013 (**Annexure 2 and 3 respectively**) ATL submitted that it had acquired 5,10,444 shares (around 51% shareholding) of Kinfotech Pvt. Ltd. from Mr Prabhakar Kini, his children Mr. Satish Kini and Ms. Vidya V Shanbhag (shareholders of Kinfotech Pvt. Ltd.) and paid an amount of Rs. 5.10 Crore towards the same. With regards to this transaction, ATL submitted copies of share purchase agreement, bank account statements reflecting the payment, copy of share transfer forms (indicating the transfer of shares in favour of ATL) and details of stamp duty paid.
5. From the bank statements, submitted by ATL, it was observed that ATL paid approx. Rs. 4.10 Crore only (Rs. 3.10 Crore to Shri Prabhakar Kini and Rs. 50.22 Lakh each to Mr. Satish Kini and Ms. Vidya V Shanbhag during the period 03/05/2011 to 07/05/2011) to the shareholders of Kinfotech Pvt. Ltd.
6. Shri Prabhakar Kini (founder Promoter and major shareholder of Kinfotech Pvt. Ltd.), vide his letter dated 21/12/2016 (**Annexure 4**), confirmed that he and his children sold the shares to ATL, vide an agreement dated 29/04/2011 and received Rs. 4,10,44,400/- towards the same. Further, on perusing the Annual Return of Kinfotech Pvt. Ltd. as available at MCA website, it was observed that ATL was mentioned as shareholder of Kinfotech as on the date of last AGM of Kinfotech (which was on 23/09/2011). Hence, based on the bank statements of ATL and the confirmation received from Promoter of Kinfotech Pvt. Ltd., it is alleged that ATL utilised approx. Rs. 4.10 Crore to acquire shareholding of Kinfotech Pvt. Ltd.
- Mindriver Information Technologies Pvt. Ltd. (Mindriver)
7. Vide its letter dated 11/06/2012, ATL had submitted that it had acquired 4,39,990 shares of Mindriver from Shri K. Dhanasekharan and others (total eight shareholders of Mindriver) and paid Rs. 9,49,98,241/- towards the same. ATL also submitted copies of share purchase agreement and share transfer forms with regard to

the same. However, from the bank account statements submitted by ATL (**Annexure 5**), it was observed that it had paid approx. Rs. 9.42 Crore to the shareholders of Mindriver.

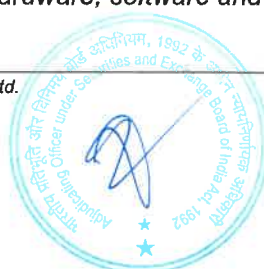
8. In response to SEBI letter, Shri K Dhanasekharan vide his letter and Smt. Vaishali Bansal Prasad vide her letter dated 30/01/2017 (majority shareholders of Mindriver) confirmed the aforementioned acquisition of shares of Mindriver by ATL. Shri Sanjay Prasad, then CEO of Mindriver and signatory to the share purchase agreement dated 25/04/2011 (on behalf of Mindriver), had also confirmed the aforementioned acquisition of shares, vide his email dated 28/07/2016.
9. Hence, based on the bank statements of ATL and the confirmations received from majority shareholders of Mindriver and signatories of the aforementioned share purchase agreement, it is alleged that ATL utilised approx. Rs. 9.42 Crore to acquire shareholding of Mindriver.

Line Beyond Inc and Optech Consulting Inc

10. Vide its letter dated 11/06/2012, ATL submitted that it had acquired the aforementioned Line Beyond Inc and Optech Consulting Inc (based in U.S) from M/s. Corus Limited, UAE. ATL also submitted copies of share purchase agreement dated 21/03/2011 with Corus Ltd towards the same. In this regard, vide SEBI letters dated 17/04/2013 & 18/04/2013, ATL was inter-alia advised to provide Annual report of Corus Limited for FY 2010-11, documentary evidence w.r.t ownership of Line Beyond Inc and Optech Consulting Inc as on March 2010 & 2011 and any filing done with U.S authorities w.r.t the aforementioned acquisitions.
11. ATL, vide its letter dated 30/04/2013 had only submitted Certificate of Incorporation of Corus and copies of 'income tax return' for the year 2010-11 of Line Beyond Inc and Optech Consulting Inc, in which 'Corus Ltd' was indicated as parent company. However, ATL did not provide any details with regard to any filings with U.S. authorities or other such document to evidence that the acquisition of Line Beyond Inc and Optech Consulting Inc was from the IPO proceeds.
12. Despite of repetitive attempts made by SEBI to get the information from the company and in absence of any conclusive evidence to support the existence or acquisition of these two companies in any manner, it has been inferred that ATL did not spend any amount from IPO proceeds to acquire Line Beyond Inc and Optech Consulting as claimed by it.
13. In view of the above, it is alleged that out of Rs. 55 crore earmarked for the object of "Proposed Acquisitions" as mentioned in the prospectus, ATL had utilized only Rs. 13.52 crore (Rs. 4.1 crore for Kinfotech and Rs. 9.42 crore for Mindriver) towards the stated object.

Setting up of Software Development Centre and Corporate Office (Rs. 26.18 crore)

14. ATL, vide its letter dated 11/06/2012 inter-alia submitted that it had utilized Rs. 5.74 crore towards Software Development Centre and Corporate Office. However, it was observed that same was in variance with quarterly filing (with the exchanges) as on 30/06/2011 w.r.t utilization of IPO and Annual Report for the year 2010 -11. (**Annexure 6**).
15. Hence, vide SEBI letter dated 02/07/2012, ATL was advised to clarify above discrepancies and furnish detailed reply along with supporting documents. ATL, vide its letter dated 17/07/2012 inter-alia submitted that no amount was spend on account of construction of Software Development Centre. ATL had further stated that the amount of Rs. 5.74 crore was spend on account of hardware, software and related expenditure.

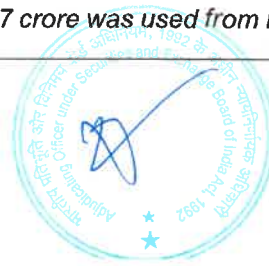


16. As regard to Rs. 5.74 crore claimed to have been utilised by ATL on account of hardware, software and related expenditure, no supporting documents have been provided by ATL despite specifically advising it to do so.
 17. In view of above, it is alleged that out of Rs. 26.18 crore earmarked for the object of "Setting up of Software Development Centre and Corporate Office" as mentioned in the prospectus, ATL had not utilised any amount towards the stated object.
- Expansion and Establishment of overseas offices (approx. Rs. 19.45 crore)
18. ATL vide its dated 11/06/2012, inter-alia submitted that an amount of Rs.19.25 crore was utilised towards Expansion & Establishment of overseas offices. However, specific details were not provided. ATL was once again advised to provide complete details in this regard, along with documentary evidence, including the places where the offices were opened, amount spend at each location etc. ATL, vide its letter dated 17/07/2012 (**Annexure 7**) submitted copy of 'turnkey service agreement' between Vision Info Inc (UAE based subsidiary of ATL) (hereinafter referred to as "**Vision**") and Interbrew Networks Ltd, UAE (hereinafter referred to as "**Interbrew**") for providing consultancy services for opening offices abroad and details of expenditure (Rs. 19.29 crore) incurred in 8 locations (at Dallas, Boston, Chicago, San Francisco, Tampa, Dubai, Germany & Singapore).
 19. On perusal of the said agreement, it was observed that the agreement was between Vision and Interbrew and the agreement nowhere stated that the offices being opened were for ATL. Also, the agreement did not indicate specific details like tentative location/area of offices etc. Further, ATL did not provide any supporting documents on the expenditure incurred or details like addresses of offices etc.
 20. Hence, vide SEBI letter dated 08/04/2013, ATL was once again advised to provide specific details like addresses of the overseas offices, dates of opening and details of the payment made along with supporting documents. ATL, vide its letter dated 30/04/2013 inter-alia submitted addresses of 8 Overseas Offices and a summary sheet of expenditure incurred in each location (with no supporting document). Further, as regards details of payment towards setting up of offices abroad, ATL merely mentioned the following words "from ATL to Vision Info on 10/3/2011" in its letter dated 30/04/2013. From the bank account statement of ATL (**Annexure 8**), it was observed that an amount of Rs. 22.63 crore approx (equivalent to US\$ 50 lakhs) was transferred to Vision on 10/03/2011, who in turn had transferred the same to Interbrew on 13/03/2011.
 21. With regards to the aforementioned transfer of funds (Rs. 22.63 crore from ATL to Vision), ATL submitted different versions of replies vide its letters dated 11/06/2012 and 17/07/2012. Vide letter dated 11/06/2012, ATL stated that the said transfer to Vision Info was regarding "Project Advance Returned". Vide SEBI letter dated 02/07/2012, when ATL was advised to submit specific details of the so called project, ATL took a different stand and vide its letter dated 17/07/2012 stated that "This is not the project advance returned. Our Wholly Owned Subsidiary (WOS) Vision Info Inc has requested funds for meeting their increased working capital requirements." ATL also submitted certified copy of the resolution passed by its Board of Directors (BoD) at its Board Meeting held on 06/03/2011 regarding providing loan of amount not exceeding US \$50,00,000 to its Wholly Owned Subsidiary Vision Info Inc.
 22. Subsequently, on 18/04/2013, Shri Ravikumar stated the following "It's (payment to vision) not related to IPO objectives, the payment has gone from IPO proceeds since the company has utilized the same extent of money for the objective of IPO prior to receipt of IPO proceeds" However, no supporting document was



submitted towards the same. During statement recording on 21/01/2016 (**Annexure 9**), Shri Ravikumar stated that the aforementioned amount was transferred to Vision Info (its UAE based subsidiary) for setting up offices abroad.

23. Since, ATL has been submitting different versions at different points in time, ATL was advised to provide true and complete details with regard to transfer of funds to Vision Info. ATL vide its letter dated 26/04/2016 reiterated that BoD of ATL at their meeting held on 06/03/2011 decided to provide interest free loan of Rs. 22.63 crore to Vision Info Inc as they had requested the same for their increased long term working capital requirement. Subsequently when Vision Info was ready to repay the loan amount, they were requested to pay the same to Interbrew, towards setting of offices abroad as setting of offices abroad was one of the objects mentioned in the prospectus of IPO.
24. In reference to aforesaid transfer of Rs. 22.63 crore, the IR observes from the bank account statement of Vision Info (**Annexure 10**) that the amount of USD 50.00 lakh (equivalent of Rs. 22.63 crore) was transferred by ATL to Interbrew immediately on next day of receipt itself i.e., on 13/03/2011. In this regard, ATL could not explain as to how funds transferred by it as loan to its subsidiary for 'long term working capital' could be transferred to another entity entirely next day itself. Further, ATL could not provide minutes of meetings of Board of Vision where the related matter was part of agenda or discussed ever at the Board Meeting, despite Vision Info indicated to be its wholly owned subsidiary and with Shri Ravikumar being a Director. Moreover, ATL submitted that Interbrew was engaged as a consultant for setting up offices abroad, apart from an agreement between Vision and Interbrew for setting up of office abroad, it was neither able to provide specific details about Interbrew nor able to provide any copies of correspondence between ATL & Interbrew in this regard. Further, it was nowhere mentioned in the agreement that the offices were for ATL.
25. Incidentally, the signature of the person who had signed the aforementioned agreement between Vision and Interbrew matched with one of the applicants in the IPO of ATL. It was observed that the signatures were that of one Shri Vijay. Subsequently, statement of Shri Vijay was recorded and it came to light that he was made Director of Interbrew by Shri Ravikumar and that Interbrew was managed /operated by Shri Ravikumar, CMD of ATL.
26. From the aforesaid, it is evident that ATL has not provided relevant and specific details to evidence that Rs. 22.63 crore transferred to Vision Info was utilized for "Expansion & Establishment of Overseas offices". Accordingly, it is alleged that out of Rs. 19.45 crore earmarked for the object of "Expansion & Establishment of Overseas offices" as mentioned in the prospectus, no amount was utilised by ATL towards the stated object. Part Repayment of Term Loans (Rs. 25 crore)
27. On being advised to provide complete details on the part repayment of term loans alongwith supporting documents, ATL vide its letter dated 14/02/2013 submitted that Rs. 25 crore of the IPO proceeds were utilised towards the part repayment of term loan. However, from the copies of bank account statements submitted by ATL (**Annexure 11**), it was noted that it made part repayment of Rs.19.35 crore only through monthly instalments paid during the period March 2011 to October 2012.
28. Further, ATL, vide letter dated 25/01/2016 (**Annexure 12**) submitted bank statements pertaining to part repayment of Rs. 25 crore term loan. From the bank account statements submitted by ATL, it was observed that out of aforementioned Rs. 19.35 crore, an amount of Rs. 1.67 crore was used from IPO proceeds towards



payment of instalment for term loans (Rs. 1.01 crore from State Bank of Travancore A/c Number 67042921027 on 11/03/2011 towards closure of term loan bearing loan a/c Number 67043345427 with State Bank of Travancore and Rs.65 lakhs from Axis Bank a/c 9010300011097 on 09/03/2011 towards instalments of 2 term loans). The remaining amount was paid by ATL in monthly instalments during the period March 2011 to October 2012 and was not paid from IPO proceeds as the entire proceeds of IPO were utilised / transferred to various entities within a period of 10 days (i.e. from 09/03/2011 to 18/03/2011).

29. In view of the above, it is alleged that out of Rs. 25 crore earmarked for the object of "Part Repayment of Term Loans" as mentioned in the prospectus, ATL utilised Rs. 1.67 crore towards the stated object.

Additional Working Capital Requirements (Rs. 25 crore)

30. ATL, vide letter dated 11/06/2012 submitted that as on 31/03/2012, an amount of Rs. 58.26 crore were utilized towards Additional Working Capital requirements. On being advised to provide complete details in this regard, ATL vide its letter dated 30/04/2013 submitted that Rs. 40.90 crore was utilized towards working capital and submitted the following details:

S. No	Particulars	Amount (in Rs. crore)
1	For Salaries and related work	30.50
2	Business promotion and marketing exp	0.96
3	For UID and other projects	3.26
4	For onsite development expense	6.19
	Total	40.90

However, ATL did not provide any supporting document with regard to its above claim.

31. In order to validate the aforementioned claims of ATL regarding utilisation of Rs. 40.90 crore, the bank account statements of ATL (**Annexure 13**) was analysed and it was observed that from IPO proceeds, an amount of Rs. 87 lakh was utilized towards payment of salary, as per the details given below:-

Bank Name	A/c No	Date	Amount (Rs.)	Description
State Bank of Travancore	67042921027	03/05/2011	4,18,172	DR Thru Chq /Sbt Salary To Staff
		30/04/2011	82,87,000	Debit /To Salary April 2011
Total			87,05,172	

32. In view of the above, it is alleged that that out of Rs. 25 crore earmarked for the object of "Additional Working Capital requirements" as mentioned in the prospectus, ATL utilised Rs. 87 lakh towards the stated object.

Public Issue Expenses (Rs. 15 crore)

33. ATL vide its letter dated 11/06/2012 submitted that it had spent Rs. 11.12 crore towards Public Issue Expenses and also submitted copies of invoices for an amount of Rs.5.86 crore. On being advised to provide complete details of amount spend towards Public Issue Expenses along with necessary invoices/other supporting documents, vide its letter dated 17/07/2016 apart from aforementioned Rs.5.86 crore, ATL has additionally submitted a debit note issued by Vision Info Inc (an overseas subsidiary of ATL) for an amount of US\$5.5

lakh, without specifying the details of expenditure involved. As Vision Info is wholly owned subsidiary of ATL itself, the debit note issued by it was not considered as valid evidence towards the expenditure incurred for Public Issue Expenses.

34. In view of the above it is alleged that out of Rs. 15 crore earmarked for the object of "Public Issue Expenses" as mentioned in the prospectus, ATL has utilised Rs. 5.86 crore towards the stated object.

General Corporate Purposes (Rs. 4.36 crore)

35. ATL, vide its letter dated 11/06/2012 submitted that an amount of Rs. 4.29 crore was spend towards General Corporate Purposes. The break up of the said Rs. 4.29 crore given by ATL was as follows:

Particulars	Amount (Rs.)
Foreign Travel/domestic travelling exp	1.18 Cr
Maintenance and upgradation of PCs	0.75 Cr
Business promotion	0.64 Cr
Printing and Stationery	0.53 Cr
Others	1.17 Cr

36. ATL had also submitted copies of certain invoices towards purchase of PCs and equipment rental agreements with regard to above. Vide SEBI letter dated 02/07/2012, ATL was informed that documents submitted by it were incomplete & vague and advised to provide complete details with necessary invoices/other supporting documents.
37. ATL, vide its letter dated 17/07/2012 submitted copies of certain journal vouchers towards travel expenses and invoices towards purchase office stationery etc. It was also observed that most of the invoices / journal vouchers were dated after April 2011 whereas from the bank statements of ATL (**Annexure 14**), it was observed that the entire IPO proceeds were transferred by ATL to various entities during 09/03/2011 to 18/03/2011. Further, ATL could not provide any document as evidence to prove that the payment for aforementioned invoices / journal vouchers were made out of IPO proceeds.
38. As ATL has not provided any evidence to substantiate its claim that it had spent Rs. 4.36 crore from IPO proceeds for General Corporate Purpose, it is alleged that ATL had not utilised any amount towards the stated object of General Corporate Purpose.
39. From the IR, following variation in the utilization of IPO proceeds as stated by ATL and as observed during the investigation is noted:

S. No.	Particulars	Amount utilized as per ATL		As per Investigation
		As per Prospectus (Rs.)	As per ATL letter dated 11/06/2012 (as on 31/03/2012) (Rs.)	Amount utilized by ATL for IPO objects (Rs.)
1	Proposed Acquisitions	55.00	51.96	13.52
2	Setting up of Software development center & Corporate Office	26.19	5.74	-



S. No.	Particulars	Amount utilized as per ATL		As per Investigation
		As per Prospectus (Rs.)	As per ATL letter dated 11/06/2012 (as on 31/03/2012) (Rs.)	Amount utilized by ATL for IPO objects (Rs.)
3	Expansion and establishment of offices overseas	19.45	19.29	-
4	Part repayment of term loan	25.00	19.35	1.67
5	Additional working capital	25.00	58.26	0.87
6	Public Issue expenses	15.00	11.12	5.86
7	General Corporate Expenses	4.36	4.29	-
	TOTAL	170.00	170.01	21.92

40. From the above table, it is observed that out of Rs. 170 crore of IPO proceeds, the company had utilized only Rs. 21.92 crore towards the objects of the issue. Hence, it is alleged that ATL had deviated from the objects of the issue and not utilized the IPO proceeds as per the objects as stated in the prospectus.

Role of Audit Committee

41. As per prospectus of ATL and Annual report of ATL for FY 2010-11 and 2011-12, the following were the 3 non- executive and independent directors of ATL who were also the members of Audit Committee of ATL during FY 2010-11 and 2011-12:

Table 16

S. No.	Name
1	Mr. Mohan Hosahally Ramakrishna
2	Mr. Ramdas Janardhana Kamath
3	Dr. Subrahmanya Dandala Kannayya Reddy

42. Shri Mohan in his statement dated 19/08/2016 (**Annexure 15**) submitted that it was he who introduced his partner Shri Vijay to Shri Ravikumar/ATL and based on the request of Shri Ravikumar, he requested, Shri Vijay to sign papers relating to formation of Corus Limited & Interbrew Networks Ltd (UAE based firms) and other papers relating to said companies. In this regard, Shri Mohan had submitted an e-mail dated 18/3/2010 from Prashanth Kumar, an employee of ATL, requesting Mohan to obtain signature of Vijay on certain documents relating to Corus.
43. Shri Mohan had also stated that based on the request of Shri Ravikumar, he made some of his employees, his partner Shri Vijay and wife of Shri Vijay sign the share application form in the IPO of ATL. It was observed that payments with regard to these applications were made by ATL itself through Equastone Properties Pvt Ltd.
44. Shri Mohan had also stated that based on the request of Shri Ravikumar, he had also requested some of his employees to become director of Equastone Properties Pvt Ltd, a company promoted by Smt. Malati Reddy, wife of Shri Ravikumar.



45. Being an independent Director, Shri Mohan was expected to uphold ethical standards of integrity and probity and safeguard the interest of all stakeholders, particularly, minority shareholders. However, in his own admission, Shri Mohan made his partner to sign the papers relating to Corus Ltd. & Interbrew. In view of the same, conduct of Shri Mohan was contrary to what was expected of him as an Independent Director.
46. As per Clause 49 II (D) 5A of the Listing Agreement it is the duty of the Audit Committee members to review the utilization of funds raised by ATL through IPO and make appropriate recommendations to the Board of the Company. However, as observed above, ATL had deviated from the objects of the issue and not utilized the IPO proceeds as per the objects as stated in the prospectus. Hence, it is alleged that the Audit Committee members failed to perform their duties in relation to reviewing the utilization of IPO proceeds and apprising the Board members about the aforementioned misutilization of IPO proceeds.
47. It is observed that ATL and its Chairman and Managing Director of ATL (Shri Ravi Kumar Doraiswamy) had played fraud and misled the investors by deviating from the objects of the issue and not utilizing the fund raised through IPO towards the objects as set out in the prospectus. Further, the members of the Audit Committee for FY 2010-11 and 2011-12 (Shri Ramdas Janardhana Kamath, Shri Subrahmanya Dandala Kannayya Reddy and Shri Mohan Hosahally Ramakrishna) were also party to such fraud of ATL as they failed to perform their duties relating to reviewing the misutilization of funds raised in IPO.
48. In view of above, it is alleged that ATL, its Chairman & Managing Director (Shri Ravi Kumar Doraiswamy), and its audit committee members for FY 2010-11 and 2011-12 (Shri Ramdas Janardhana Kamath, Shri Subrahmanya Dandala Kannayya Reddy and Shri Mohan Hosahally Ramakrishna) have violated Regulations 3 (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003 read with Sections 12A (a), (b) and (c) of SEBI Act, 1992 by deviating from the objects of the issue and not utilising the IPO proceeds as per the objects stated in the prospectus.
49. ATL, Ravi Kumar Doraiswamy (Chairman and Managing Director of ATL) and independent directors of ATL, viz., Mohan Hosahally Ramakrishna, Ramdas Janardhana Kamath and Subrahmanya Dandala Kannayya Reddy, therefore, called upon to show cause as to why an inquiry should not be held against them and penalty be not imposed under Section 15HA for alleged violation of section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1) of PFUTP Regulations.
50. It is alleged that ATL had not utilized the funds raised through IPO as per the objects set out in the prospectus and diverted Rs.148.08 crore out of total IPO proceeds of Rs. 170 crore. However, the analysis of utilization of money raised in IPO was also done by observing the money trail from ATL's bank account to the bank accounts of various other entities. The said analysis is shown hereunder:
51. Details of the amount of Rs.165.67 crore (net of BRLM fee) credited to ATLs bank accounts are tabulated below:

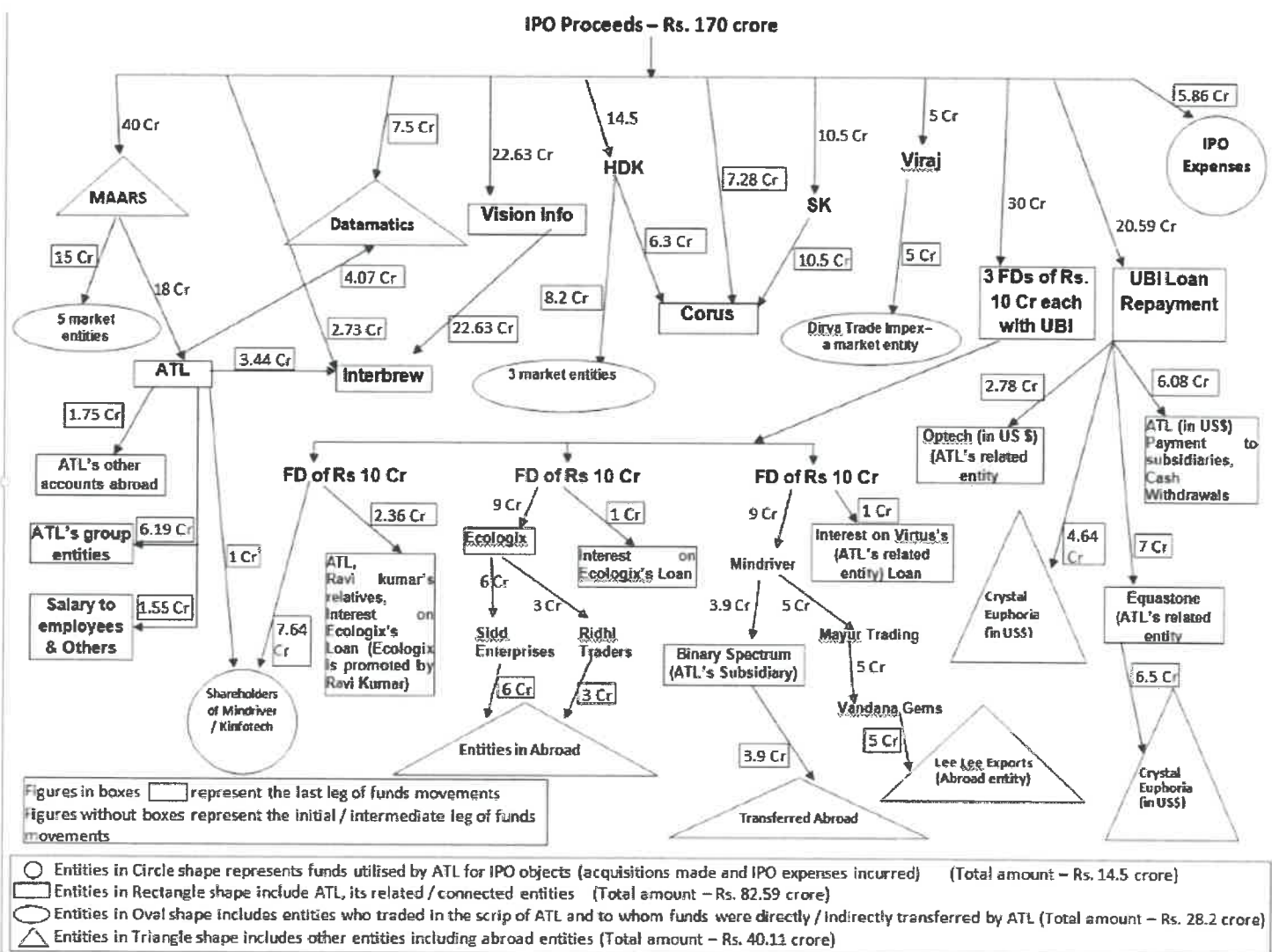
Date (of credit)	Bank Name	Bank Branch	A/c Number	Amount (in Rs.)	Bank wise (Amount Rs)
09/03/2011	Axis	MG Road Bangalore	009010300011097	59,32,49,850	59,47,98,840



				15,48,990	
09/03/2011	ICICI	Andheri (W), Mumbai	101205000264	43,36,58,430	43,36,58,430
10/03/2011	UBI	Bangalore Cantonment	0884050108584	41,34,29,400	41,34,29,400
10/03/2011	SBT	Industrial Finance	67042921027	14,36,34,240	21,48,37,977
11/03/2011		Branch, Bangalore		7,12,03,737	
Total				165,67,24,657	165,67,24,657

UBI = United Bank of India, SBT = State Bank of Travancore

52. The fund flow from the IPO proceeds to major entities, as evident from the bank account statements of ATL is diagrammatically represented in the next page:
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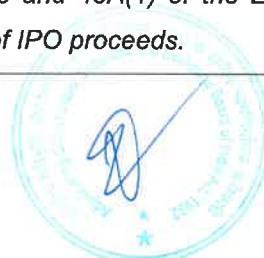
Wrong Disclosures to NSE and BSE

53. Following disclosures were made by ATL on NSE & BSE regarding deployment of IPO proceeds, under Clause 43 of Listing agreement. (Copy of disclosures placed at **Annexure 16**)

(in Rs. crore) **Table 27**

Description	Q.E Mar 31, 2011		Q.E Jun 30, 2011		Q.E Sept 30, 2011		Q.E Dec 31, 2011		Q.E Mar31, 2012	
	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
Amount received from IPO	170.00	170.01	170.00	170.01	170.00	170.01	170.00	170.01	170.00	170.01
Proposed Acquisitions	55.00	37.35	55.00	51.96	55.00	51.96	55.00	51.96	55.00	51.96
Setting up of Software Development Centre and Corporate Office	26.18	9.50	26.18	9.50	26.18	9.50	26.18	-	56.18	5.74
Expansion & Establishment of overseas offices	19.44	3.12	19.44	4.24	19.44	4.24	19.44	4.24	19.44	19.28
Part Repayment of Term Loans	25.00	5.00	25.00	7.78	25.00	9.98	25.00	14.81	25.00	19.34
Additional working capital requirements	25.00	25.00	25.00	38.42	25.00	37.32	25.00	51.83	25.00	58.25
Public Issue Expenses	15.00	11.12	15.00	11.12	15.00	11.12	15.00	11.12	15.00	11.12
General Corporate Purposes	4.36	1.04	4.36	3.54	4.36	4.29	4.36	4.29	4.36	4.29
Total	170.00	92.14	170.00	126.57	170.00	128.42	170.00	138.26	170.00	170.01
Temporary deployment of unutilized amount as follows:										
Fixed Deposit in Bank	-	40.00		40.00		40.00		30.00	0	0
Balance in current account with schedule bank	-	37.86		4.43		1.58		1.74		
Amount unutilized		77.86		43.43		41.58		31.74		

54. By comparing the above mentioned details regarding utilization of IPO proceeds with the actual utilization, it is observed that details of utilization as disclosed to exchanges did not match with the actual utilization as appearing in the bank account statements of ATL.
55. In view of above, it is alleged that ATL had violated Clause 43 and 43A(1) of the Listing Agreement by providing wrong disclosures to NSE & BSE regarding utilization of IPO proceeds.



56. ATL is, therefore, called upon to show cause as to why an inquiry should not be held against it and penalty be not imposed under section 23E of SCRA for the alleged violation of clause 43 and 43A(1) of the Listing Agreement.

Transfer of funds from IPO proceeds

57. Based on observations made at pre paras, it has been alleged that ATL had not utilized the funds raised through IPO as per the objects set out in the Prospectus and diverted Rs.148.08 crore out of total IPO proceeds of Rs. 170 crore. However, the analysis of utilization of money raised in IPO was also done by observing the money trail from ATL's bank account to the bank accounts of various other entities. The said analysis is shown hereunder:

Maars Software International Limited

58. ATL vide its letters dated 11/06/2012 and 02/07/2012 had indicated that amount of Rs.40.00 crore transferred to Maars Software International Limited (hereinafter referred to as "**Maars**") was towards 'Project Advance Paid' for development of two software projects and submitted copy of the agreement dated 09/03/2011 in this regard. On perusal of the agreement submitted by ATL, it was observed names and designation of the signatories to the agreement were not mentioned and no witness had signed the agreement.

59. From the IR it is noted that the reply of ATL was not tenable in view of the following:

- i) Vide letter dated 11/06/2012, ATL provided copies of agenda & board minutes pertaining to the period 01/12/2010 to 31/05/2011. However, there was neither any agenda item nor any mention of dealing with Maars in any of the meetings of its BoD (during the said period).
- ii) ATL could not produce any correspondence between Maars & ATL relating to the said transaction except a copy of agreement.
- iii) Shri Ravikumar in his statement recorded on 21/01/2016 (**Annexure 17**) admitted that he did not know whether Maars had technical capabilities and competency regarding the so called ERP related project entrusted to them by ATL. It is unlikely that a company which itself was into field of software development would not have resorted to all such basic diligence, had it been a genuine transaction/deal.
- iv) Shri Ravikumar in his statement recorded on 21/01/2016 admitted that as regards present status, nothing was done for which Rs. 40.00 crore advance was paid by ATL to Maars. Hence the claim of ATL appears to be an afterthought so as to portray the transfer of funds to Maars as genuine. He had further admitted that the amount of Rs.40.00 crore transferred to Maars was paid from the IPO proceeds and it was not related to the IPO objects and that payment to Maars from IPO proceeds was a discrepancy.
- v) From the financial statements of Maars for FY 2010-11 (**Annexure 18**), it was observed that Maars did not have any income from operations and its employee cost was only Rs. 4,000/-.
- vi) Name of Maars appeared in the list of companies under liquidation as on 21/07/2008, as appearing on the website of MCA (extract placed at **Annexure 19**).

60. From the bank account statements of Maars and other entities, the following was observed:

- i) Out of Rs. 40 crore received from ATL, an amount of Rs. 15 crore was transferred by Maars to five entities, routed through various entities - Newgen Intl Pvt Ltd, Arch Finance Ltd, Decent Financial Services Ltd, SV Enterprises and Sparkle Security Solutions P Ltd (Broker), who traded in the scrip of ATL subsequent to its listing.



- ii) An amount of Rs. 18.00 crore was transferred back from Maars to ATL during April 2011 which was further transferred by ATL to various entities as shown below:

Details	Amount
Transferred to Interbrew Networks (In US \$)	3.44
Transferred to Datamatics Software (In US \$)	4.07
Transferred abroad in ATL's A/c (in US \$)	1.75
Salary to employees	0.87
Shareholders of Mindriver / Kinfotech	1
Transferred to group/associate entities	6.19
Others	0.68
Total	18.00

61. From the above, IR observes that except Rs. 1.87 crore that was used by ATL for paying to shareholders of Mindriver / Kinfotech (part of acquisitions made by ATL) and for paying salaries, the remaining Rs. 38.13 crore were not used as per the objects of the issue. Further, no work was done in relation to the advance being given to Maars and a part of IPO funds that was transferred to Maars were diverted by Maars to ATL's connected entities and other market entities who had traded in the scrip of ATL after listing. Hence, it is alleged that Maars was hand in glove with ATL and was party to the actions and deeds of ATL to divert the IPO money and not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.
- Viraj Mercantile Pvt. Ltd.
62. ATL vide its letter dated 11/06/2012 stated that the amount of Rs. 5.00 crore transferred on 09/03/2011 to Viraj Mercantile Pvt Ltd. (hereinafter referred to as "**Viraj**") was towards 'ICD paid'. On being advised ATL to provide relevant details/information along with documents, ATL vide its letter dated 17/07/2012 claimed that consequent to a MOU for the development of software project, an amount of Rs. 5.00 crore was received on 14/02/2011 as Project Advance from Viraj and the amount of Rs. 5.00 crore transferred to Viraj on 09/03/2011 was not an ICD payment but refund of project advance returned to the party, since the project could not take off. ATL also provided an 'MOU for cancellation of the project.
63. It is noted from the IR that the submissions of ATL that payment to Viraj was refund of project advance is not acceptable broadly in view of the following:
- ATL has taken conflicting stands regarding reason for the payment to Viraj.
 - From the copy of MOU submitted by ATL, it was observed that:
 - The MOU submitted by ATL is not on stamp paper.
 - The MOU does not indicate the place
 - The MOU did not bear any witnesses
 - ATL could not provide even a single document apart from the MOU.
 - There was no mention of any entity named Viraj in the agenda items / minutes of meetings of Board of Directors of ATL and in prospectus or otherwise through advertisement etc.
 - Incidentally, the evidence provided by ATL viz., the document claimed to be MOU dated 21/01/2011 appears to be false and submitted as an afterthought. This is evident from the fact that the document was apparently



copied from the copy of MOU between the Department of Agriculture and Cooperation (hereinafter referred to as "**DAC**"), Ministry of Agriculture, Government of India and National Informatics Centre, Ministry of Information Technology, Government of India (hereinafter referred to as "**NIC**") in which simply the entity names appear to have been substituted by ATL viz., NIC with ATL and DAC with Viraj. However, ATL seems to have missed to substitute NIC with ATL under Pt 1 of Para A and taking the cue from this, a simple random search on google reveal the document (the URL being: <http://dacnet.nic.in/dacnetmou-final.doc>) (extract of the MOU between DAC and NOC is placed at **Annexure 20**).

- vi) That the document submitted by ATL is actually copied from the MOU between DAC and NIC is further strengthened from the fact that even certain words which were indicated in **BOLD** and **UNDERLINE** have been retained (as it is) in the document submitted by ATL. Besides, even other aspects like the group size {Pt No. 4(i), Para A of ATL document), nomenclature for committee (PMC), designation (Sr Technical Director), frequency of meeting (at least once in two months) and other such terms like Viraj offices and field units, Viraj Divisions, the payment heads (Pt No. 4 of Para B of ATL document), duration etc., are exactly the same as in the MOU between DAC and NIC. All this leads to conclusion that ATL attempted to submit certain document as an afterthought after having copied it from internet.
 - vii) Even if the submissions made by ATL are believed to be true that ATL had received project advance from Viraj, ATL should have disclosed the amount of project advance received in the prospectus. The fact that the said amount of Rs. 5 crore received from Viraj was not disclosed in the prospectus, itself shows that it is an afterthought on the part of ATL so as to portray the transfer of funds from IPO proceeds to Viraj as genuine.
 - viii) Statement of Shri Ravikumar was recorded on 21/01/2016 during which he admitted that payment to Viraj was not as per objects of the issue as disclosed in the prospectus relating to IPO of ATL.
 - ix) Besides, from the Axis Bank statement of ATL (A/c Number 009010300011097) (**Annexure 21**), it was observed that ATL had received an amount of Rs. 5.00 crore from Viraj on 14/02/2011 and immediately after receipt the amount was transferred to Corus Ltd (having its bank a/c with Standard Chartered Bank A/c, through Bank of America).
 - x) Further, from the Axis bank A/c Number 910020030165850 of Viraj (**Annexure 22**), it was observed that after credit of Rs. 5 crore from ATL on 09/03/2011, entire amount was transferred to Dirva Trade Impex Pvt. Ltd. on same day who was observed to be net buyer of shares of ATL after its listing.
64. In view of the above, it is noted from the IR that the amount of Rs. 5 crore that ATL received from Viraj on 14/02/2011 were immediately transferred by ATL to its related entity i.e. Corus Ltd. The IPO funds that was transferred to Viraj was immediately diverted by Viraj to Dirva Trade Impex P Ltd. who had traded in the scrip of ATL after listing. Hence, it is alleged that Viraj was hand in glove with ATL and was party to the actions and deeds of ATL to divert the IPO money and not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.
- Vision Info Inc.
65. Vision is a wholly owned subsidiary of ATL. ATL had transferred Rs. 22.63 crore to Vision, which in turn transferred the said funds to Interbrew, which is also indirectly controlled by Shri Ravikumar, Promoter & CMD of ATL. Hence, it is alleged that ATL had rather diverted the IPO money to the tune of Rs. 22.63 crore to its own related entity (i.e. Interbrew) through its wholly owned subsidiary (i.e. Vision).



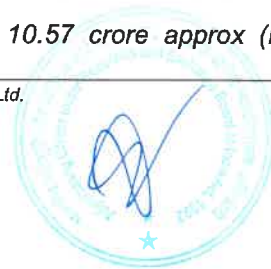
Interbrew Networks Ltd.

66. As already explained in pre paras, Interbrew was an entity managed and controlled by ATL itself. While ATL in its letter dated 17/07/2012 submitted that Interbrew was engaged as a consultant for setting up offices abroad, however, it was neither able to provide specific details about Interbrew nor able to provide any copies of correspondence between ATL & Interbrew in this regard. Hence, it is alleged that Rs. 2.73 crore which was transferred to Interbrew were not related to the objects of the issue. ATL had rather diverted the IPO money to the tune of Rs. 2.73 crore to its own related entity i.e. Interbrew.
67. ATL was asked to provide complete details about the Datamatics Solutions Inc (hereinafter referred to as "**Datamatics**") and funds transferred to Datamatics alongwith the current status of transaction. ATL vide its letter dated 13/05/2016 has stated that Datamatics was ATL's onsite projects vendor and that it was not having any details of promoters/directors/key management personnel/contact details of Datamatics. As regards details of all correspondence to/from ATL/Datamatics, ATL has stated that they were not able to pull out any correspondence. Therefore, it is alleged that ATL had diverted Rs. 7.62 to Datamatics which was not related to the objects of issue.

HDK International Pvt. Ltd. and SK Universal Pvt. Ltd.

68. From the bank account of the ATL (A/c Number 9010300011097, Axis Bank) (**Annexure 23**), it was observed that there were transfer of Rs. 14.5 Cr to HDK International Pvt. Ltd. (hereinafter referred to as "**HDK**") and Rs. 10.5 Cr to SK Universal Pvt. Ltd. (hereinafter referred to as "**SK**") on 10/03/2011 from IPO Proceeds. HDK & SK are related entities as they have common director/address/ replies through common signatory etc. Director / Address details of HDK & SK are placed at **Annexure 24**.
69. ATL vide its letters dated 11/06/2012 & 17/07/2012 submitted that it had received project advances from HDK (Rs. 14.5 Cr) and SK (Rs. 10.5 Cr) during 10-23, February, 2011 consequent to the development of software project. As the project could not take off, it was cancelled and 'Project Advance Returned'. ATL has submitted copies of the 'MOU' of the project.
70. It is noted from the IR that the submissions of ATL are not acceptable in view of the following:
- i) From the copy of document claimed to be MOU between itself and HDK/SK, submitted by ATL, it was observed that:
 - o The MOU submitted by ATL is not on stamp paper.
 - o The MOU did not indicate any place.
 - o The MOU did not bear any witnesses
 - o Name and designation of persons executing the MOU were absent.
 - ii) Besides copies of MOUs, ATL did not provide even a single document / correspondence entered into by ATL with HDK / SK.
 - iii) There was no mention of any entity namely HDK/SK in any agenda items / minutes of meetings of Board of Directors of ATL and in prospectus or otherwise through advertisement etc
 - iv) Shri Ravikumar in his statement dated 21/01/2016 stated that he did not know about the background and business activities of HDK & SK. It is unlikely that an entity which is developing certain point of sales software for another entity would not even know about its activities/operations or its signatories particularly when it had received advance also and entered into an MOU.

- v) Shri Ravikumar in his statement dated 21/01/2016 had himself admitted that payment to HDK & SK was not as per objects of the issue as disclosed in the prospectus relating to IPO of ATL.
 - vi) Shri Ravikumar, the CMD of ATL in his statement dated 21/01/2016 and Shri Sunil Jeetmal Kothari, Director of HDK/SK in his statement dated 05/02/2016 (Annexure 25) stated that there was no written correspondence between ATL and HDK/SK. The aforementioned MOU was shown to Shri Sunil Jeetmal Kothari, Director of HDK & SK. In his statement dated 05/02/2016, Shri Sunil Jeetmal Kothari stated that neither he nor anybody else from HDK or SK had signed any MOU with ATL.
 - vii) Even if the submissions made by ATL are believed to be true that ATL had received project advance from HDK / SK, ATL should have disclosed the amount of project advance received in the prospectus. The fact that the said amount of Rs. 25 crore received from HDK / SK was not disclosed in the prospectus, itself shows that it is an afterthought on the part of ATL so as to portray the transfer of funds from IPO proceeds to HDK / SK as genuine.
71. Further, from the bank account statements of HDK and SK (**Annexure 26**), the following was observed:
- i) During Feb 14 - 22, 2011, a total of Rs. 25 crore was transferred from HDK and SK to ATL which was further transferred to Corus Limited, an entity controlled by ATL.
 - ii) It was observed also that part of the fund transferred by ATL to the entities (HDK & SK) from the IPO proceeds, were routed by HDK (partly/fully) to entities trading in the scrip of ATL, subsequent to listing.
72. In view of the above, it is alleged that HDK and SK were also hand in glove with ATL and were party to the actions and deeds of ATL to divert the IPO money and not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.
- Corus Limited
73. While ATL vide its letter dated 11/06/2012 submitted that there was an agreement between Corus Limited & ATL with regard to acquiring two Companies based out of USA - viz Line Beyond Inc and Optech Consulting Inc., however, as stated in pre paras, Corus Ltd. and Interbrew were operated / managed by Shri Ravikumar (CMD of ATL) himself and the acquisitions of Line Beyond Inc. and Optech Consulting Inc. was not genuine. In view of above, it is alleged that Rs. 7.28 crore which were transferred to Corus Limited were not related to the objects of the issue, rather ATL diverted the IPO money to the tune of Rs. 7.28 crore to its related entity i.e. Corus Limited.
74. It is observed from the IR that as per the bank account statements of ATL maintained with UBI & SBT (**Annexure 27**), it was observed that out of IPO proceeds, a sum of Rs. 30 crore (10+ 10+ 10 crore) used for opening Fixed Deposit (FD) and Rs. 20.59 crore were used for settlement of Loan account.
- Aarm Finser India Limited
75. From the IR it is observed that on 10/03/2011, FD A/c Number 0884109015449 of Rs. 10 crore was opened for period of 91 days. This FD was marked as lien for the Loan of Rs. 9 crore availed by Aarm Finser India Ltd. (hereinafter referred to as 'AFIL') on 21/04/2011. The said FD was prematurely closed on 23/04/2011 and using the closure proceeds, fresh FD was opened for period of 12 months. However once again this FD was also prematurely closed on 02/02/2012 and on same day 11 new FDs made. All these 11 FDs were also prematurely closed on next day itself (viz. 03/02/2012) and the amount credited to ATL Bank A/c Number 0884050108584 with UBI after which an amount of Rs. 10.57 crore approx (Rs. 10,57,47,000/-) was



transferred to AFIL in its bank A/c Number 0884050109079 with UBI. From said a/c of AFIL, an amount of Rs. 9.89 crore approx (Rs. 9,89,46,553) was utilized on 03/02/2012 to settle the Loan A/c Number 0884300026965 of AFIL.

Ecologix Knowledge Solutions Pvt. Ltd.

76. It was observed that the said Loan A/c Number 0884300026965 related to the loan of Rs. 9.63 crore availed by AFIL on 28/09/2011. It was further observed that this loan availed on 28/09/2011 was itself taken to settle earlier loan of Rs. 9.00 crore (Loan A/c Number 0884050109079) availed on 27/04/2011. It was observed that said Rs. 9.00 crore availed as loan was transferred by AFIL to Ecologix Knowledge Solutions Pvt Ltd (hereinafter referred to as "**Ecologix**"), a company promoted by Mr. Ravikumar (as per prospectus of ATL) and in which he was also a Director.
77. It was observed that Ecologix had utilized this amount to settle an outstanding Loan (Loan of Rs. 9.00 crore, availed by it on 11/03/2011 - Loan A/c Number 0884300026521). The said loan of Rs. 9.00 crore availed by Ecologix on 11/03/2011 was credited to Ecologix bank A/c Number 0884050108676 with UBI from where, on same day, the entire amount was transferred through RTGS to Sidd Enterprises and Ridhi Traders (Rs. 6.00 crore and Rs. 3.00 crore respectively) from where the funds were ultimately transferred to entities abroad (viz., Kumkum Trading, Oracle Imports, Uniglobe Trading, Shankeshwar Diamonds).
78. From the KYC of AFIL submitted by UBI (**Annexure 28**), it was observed that Shri D Veda Vyasa Rao was the authorized signatory to the bank accounts of AFIL. It was also observed from the Prospectus of ATL that Shri D Veda Vyasa Rao who was the Director of AFIL was also Head – Accounts of ATL and as per reply of ATL vide letter dated 30/05/201, Shri Anil Kumar P who was also a Director of AFIL was accounts executive with ATL. Further, Shri Anil Kumar P vide his letter dated 27/05/2016 had stated that he was made Director of many companies (including Aarm Finser, Ecologix) by Shri Ravikumar and Shri Jamili Jalaiah of ATL by taking his ID proof and address proof etc. He had also stated that he was not aware of what all transactions were made.
79. From the above, it is alleged that AFIL was controlled and managed by ATL / Shri Ravikumar. Further, it is also alleged that out of the Rs. 10 crore which was kept as FD out of IPO proceeds, Rs. 9 crore was transferred abroad to various entities (by routing through ATL's related entities) and an amount of Rs. 1 crore (approx.) was utilized for paying the interest on loan taken by AFIL). Hence, the entire Rs. 10 crore which was kept as FD was not utilized for IPO objects. Therefore, it is alleged that Aarm Finser India Ltd. and Ecologix Knowledge Solutions Pvt. Ltd. (who were the related entities of ATL) were also hand in glove with ATL and were party to the actions and deeds of ATL to divert the IPO money and not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.
80. The IR observes that on 10/03/2011, FD A/c Number 0884109015458 of Rs. 10 crore was opened for 91 days. This FD was closed prematurely on 27/04/2011 to open another FD A/c Number 0884109016165 for 12 months which was lien marked to loan of a group company of ATL i.e. Ecologix dated 28/09/2011. On 01/02/2012, this FD closed prematurely and 11 new FDs opened (1 for Rs.50.00 lakh and 10 for Rs. 95.00 lakh each - FD A/c numbers being various numbers between 08841090108747 to 08841090108844). Again all these 11 FDs were prematurely closed on 02/02/2012 (next day after opening of these FDs) and amount



was credited to ATL Bank A/c Number 0884050108584 and thereafter on same day an amount of Rs. 10.20 crore was transferred to Ecologix's UBI Bank A/c Number 0884050108676.

81. Of these, on 02/02/2012, Rs. 9.88 crore approx were utilized to settle UBI Loan A/c Number 0884300026974 of Ecologix (Rs. 9.00 crore taken on 28/09/2011). This amount was received by ATL (routing through bank accounts of entities managed /controlled by ATL). Further, ATL had utilized this amount in the following manner:
- i) Rs. 7.64 crore utilized to acquire Mindriver.
 - ii) Rs. 84.18 lakh was transferred to Shri Ravikumar and his relatives.
 - iii) Rs. 31.00 lakh was transferred to ATL SBT bank A/c Number 67042921027.
82. The pictorial representation of the fund flow in respect of above FD and the details provided by United Bank of India alongwith the copies of bank account statements of Ecologix, ATL in this regard is placed at **Annexure 29**.
83. In view of above, it is alleged that out of Rs. 10 crore which was kept as FD out of IPO proceeds, Rs. 7.64 crore was used for IPO objects (acquiring Mindriver) and an amount of Rs. 2.36 crore was diverted for some other purpose not related to the objects of the issue (which includes money transferred to ATL, its Promoter and his relatives and for paying the interest on loan taken in the name of Ecologix).
Virtus Tech Pvt. Ltd.
84. It is noted from the IR that on 11/03/2011, FD A/c Number 0499100453561 of Rs. 10 crore was opened for 91 days. It was observed that said FD was marked as lien for the Loan of Rs. 9 crore availed by Virtus Tech Pvt Ltd on (hereinafter referred to as "**Virtus**") 27/04/2011. However, the FD was pre-maturely closed on 21/04/2011 and closure proceeds were credited in the account ATL UBI Bank A/c Number 0499050013333 and fresh FD for Rs.10 crore was created on the same day.
85. The process of premature closing and making fresh FDs continued multiple times and FD closure proceeds were finally credited in the ATL's UBI A/c Number 0499050013333 on 29/12/2011 (Rs. 10.00 crore). On same day, Rs. 9.80 crore was transferred to UBI A/c Number 0499050149457 of Virtus from where the funds were utilized to settle an existing Loan A/c of Virtus (Loan A/c Number 0499300147361) which was earlier availed by Virtus on 28/09/2011 (Rs. 9.64 crore). The loan taken on 28/09/2011 was indicated to have been availed to settle earlier loan of Rs. 9.00 crore taken on 21/04/2011 (Loan A/c Number 0499300147088).
86. The loan of Rs. 9.00 crore availed on 21/04/2011 was credited in UBI Bank A/c Number 0499050149457 of Virtus and on same day an amount of Rs. 9.10 crore was transferred to UBI Bank A/c Number 0499050149440 pertaining to Mindriver (as per ATL, whose 100% shares were purchased by ATL / Shri Ravikumar). On same day viz., 21/04/2011, Mindriver utilized this amount to settle its outstanding Loan A/c Number 0499300146982 (Rs. 9.12 crore approx) which it had availed on 11/03/2011 (Loan Amount being Rs. 9.00 crore).
87. As per the information provided by the UBI, the said amount of Rs. 9.00 crore was credited to Mindriver UBI A/c Number 0499050149440 from where an amount of Rs. 5.00 crore was transferred to an entity namely Mayur Trading Co. (Axis Bank account N.9002003787), and Rs. 3.90 crore was transferred on to Binary Spectrum (subsidiary of ATL) on 12/03/2011 and 17/03/2011 respectively and Rs. 6.5 lakh was withdrawn in cash on 17/03/2011. The amount transferred to Binary Spectrum was further transferred abroad. From Mayur



trading, Rs. 5.00 crore was transferred to Vandana Gems on 12/3/2011 and from Vandana Gems on same day it was further transferred to Lee Lee Exports.

88. With regard to Virtus and Mindriver, the IR observes as follows:

- The FD closure proceeds were transferred to Virtus. Virtus vide its reply letter dated 23/05/2016 and 04/06/2016 inter alia stated that ATL and its nominees opened bank account in the name of Virtus and that Virtus was not aware of the account being opened with UBI. Further, from the deed of indemnity submitted by Virtus vide letter dated 04/06/2016, it was observed Virtus itself was formed with the mutual understanding of Shri Ravikumar and Shri Rahuldev A Holla, Shri Ramesh Shetty (Directors of Virtus), consequent to an MOU (dated 11/12/2009) and even the shareholding to the extent of 80% was sold by the said Directors of Virtus to Shri Anil Kumar P, at the consent of Shri Ravikumar.
- From the KYC statement of Virtus obtained from UBI, it was observed that Shri Anil Kumar P who was an employee of ATL, was the authorized signatory of bank account of Virtus. Shri Anil Kumar P vide his letter dated 27/05/2016 stated that his signature was obtained in various papers and cheque books as per instructions of then CMD of the ATL (i.e. Shri Ravikumar) where he was employed as accounts executive.

89. In view of above, it is alleged that the account of Virtus was managed by ATL and Mindriver was a group Company of ATL. The pictorial representation of the fund flow in respect of above FDs and the details provided by UBI along with the copies of bank account statements of Virtus, Mindriver, Mayur Trading and Binary Spectrum in this regard is placed at **Annexure 30**. Further, it is also alleged that out of the Rs.10 crore which was kept as FD out of IPO proceeds, Rs. 8.9 crore was diverted to entities abroad (by routing through various entities including Mindriver, Binary Spectrum, Mayur Trading and Vandana Gems). Further, an amount of Rs. 1 crore was used for paying the interest on loan taken in the name of Virtus. Hence, Rs. 10 crore which was kept as FD was not utilized for the objects of the IPO.

90. In view of the above it is alleged that Virtus (who is a related entity of ATL) was also hand in glove with ATL and was party to the actions and deeds of ATL to divert the IPO money and not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

91. On page 63 of the prospectus, it was disclosed that ATL has availed of a Bridge Loan facility of Rs. 20 crore from UBI for meeting expenses forming part of the Objects of the Issue. 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:

- Advance towards construction of building: Rs. 7.00 crore
- Working capital: Rs. 13.00 crore

92. The utilization of bridge loan as observed from the bank account statements (**Annexure 31**) and based on the details provided by UBI is 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
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Equastone Properties Pvt. Ltd.

93. From the MCA website (**Annexure 32**) Mrs. Malini Reddy, wife of Promoter CMD of ATL Shri Ravikumar, was the major promoter of Equastone and was holding 90% shareholding and other directors were employees of ATL (Shri Prashanth Kumar and Shri Madhava Reddy). From the KYC details of Equastone submitted by UBI (**Annexure 33**), it was observed that the authorized signatory to the bank accounts of Equastone was Shri D Vedavyasa Rao, Head- Accounts –ATL.
94. Mrs. Malini Reddy vide her letter dated 22/07/2016 inter alia submitted that in November 2006, she resigned as Director and transferred entire shareholding in Equastone, to Shri Prashanth Kumar. However, it was observed from MCA website that said filing was done only on July 25, 2011. Hence, it is evident that Equastone was a related company of ATL / Ravikumar.
95. With regards to transfer of funds to Equastone, ATL vide its letter dated 17/07/2012 stated that advance amount of Rs. 9.5 crore paid to Equastone upon signing a construction agreement, which was returned by it, subsequent to cancellation of agreement. However, on observing the annexures provided vide same letter of ATL dated 17/07/2012, it was observed that Equastone refunded Rs. 6.99 crore to ATL in 2 tranches of Rs. 3 crore on 06/04/2011 and Rs. 3.99 crore on 29/04/2011.
96. Further, from the bank account statement of ATL, Equastone, Virtus & Ecologix, the following was observed:
 - i) On 06/04/2011, Equastone transferred Rs. 3 crore to ATL. On the same day, Equastone received Rs. 3 crore from Virtus and Virtus received Rs. 6.1 crore from ATL on 06/04/2011.
 - ii) On 29/04/2011, Equastone transferred Rs. 3.99 crore to ATL. On the same day, Equastone received Rs. 5.34 crore (approx.) from Ecologix. Further, Ecologix availed a loan of Rs. 9 crore from UBI on 29/04/2011 for which the security was from ATL itself (FDR No. 0884109016165 of ATL as mentioned in pre paras). It was also observed that the aforementioned loan of Rs. 9 crore taken by Ecologix on 29/04/2011 was repaid by funds which were transferred by ATL to Ecologix (Rs. 9.36 crore approx. were transferred from ATL bank account to Ecologix account).
97. From the above, it is alleged that the amount which Equastone used for returning to ATL was funded indirectly by ATL. A summary of inflow / outflow of funds to / from bank account statement of Equastone is placed at **Annexure 34**. The bank account statements of ATL, Equastone, Virtus, Ecologix (highlighting the aforementioned transactions) are placed at **Annexure 35**. Further, it is also alleged that out of Rs. 7.0 crore which was transferred by ATL to Equastone, Rs. 6.5 crore was subsequently transferred by Equastone to M/s.Infrastrapedia Systems (USA), an entity based abroad (after routing the funds through Aarm Finser and Kinfotech).
98. Based on the above, it is alleged that ATL has not used Rs. 20.59 crore for the objects of IPO. Rather a major part of this Rs. 20.59 crore was diverted by ATL to various entities in abroad which was not part of objects of the issue. It is also alleged that Equastone Properties Pvt. Ltd. (who was a related entity of ATL) was also hand in glove ATL and was party to the actions / deeds of ATL/ Mr. Ravikumar of not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.



99. From the analysis of bank account statements of ATL which was based on initial layers of movement of IPO money between various entities it is alleged that out of Rs. 170 crore raised through IPO, the funds were utilized by ATL in the following manner:

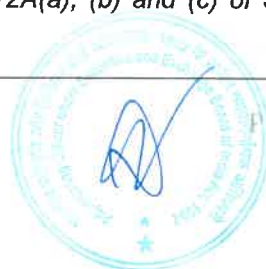
- i) Total amount utilized by ATL towards IPO objects (including acquisitions made and IPO expenses incurred) was Rs. 14.5 crore.
- ii) Total amount diverted by ATL to its related / connected entities (including funds transferred to connected entities in abroad) was Rs. 82.59 crore.
- iii) Total amount diverted by ATL to various entities who had traded in the scrip of ATL was Rs. 28.20 crore.
- iv) Total amount diverted by ATL to other entities (including abroad entities) was Rs. 40.11 crore.

100. In view of above, it is alleged that a major portion of IPO proceeds was not used for the stated objects. ATL, with the help of various conduit entities, some of whom were directly or indirectly related to ATL, had diverted these funds for various purposes (which includes transfer of funds to its own related entities, transfer to funds for the purpose of trading and others). Hence, it is alleged that various conduit entities (as mentioned in table below) had aided ATL in not deploying the IPO proceeds for stated objects of issue as disclosed in the Prospectus of ATL. ATL was able to divert the funds raised through IPO to various entities only with the help of these conduit entities.

S. No.	List of entities that aided ATL in playing fraud on investors
1	Interbrew Networks Ltd, UAE
2	Vision Info Inc UAE
3	Corus Limited, UAE
4	HDK International Pvt. Ltd.
5	SK Universal Pvt. Ltd.
6	Viraj Mercantile Pvt. Ltd.
7	Maars Software International Ltd.
8	Aarm Finser India Limited
9	Ecologix Knowledge Solutions Pvt. Ltd.
10	Equastone Properties Pvt. Ltd.
11	Virtus Tech Pvt. Ltd.

101. In view of the above, it is alleged that 11 entities mentioned in above table have violated the Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act, 1992 by being hand-in glove with ATL and being party to the actions and deeds of ATL to divert the IPO money and not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

102. Interbrew Networks Ltd., Vision Info Inc, Corus Limited, HDK International Pvt. Ltd., SK Universal Pvt. Ltd., Viraj Mercantile Pvt. Ltd., Maars Software International Limited, Aarm Finser India Limited, Ecologix Knowledge Solutions Pvt. Ltd., Equastone Properties Pvt. Ltd. and Virtus Tech Pvt. Ltd. are therefore, called upon to show cause as to why an inquiry should not be held against them and penalty be not imposed under Section 15 HA of SEBI Act for the alleged violation of section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1) of PFUTP Regulations.



Non-compliance of summons

103. Vide Summons dated 01/08/2012, information was sought from HDK & SK to which HDK & SK vide undated letters sought extension of one month time in submitting their replies.
104. Summons dated 21/09/2012 were issued to HDK and SK advising them to provide details by 01/10/2012. Through similar letters dated 12/10/2012, HDK and SK submitted their partial / incomplete / vague reply viz., bank account number not provided, reason regarding funds transfer to indicated entities not indicated, relevant details regarding receipt of funds not provided.
105. Vide SEBI letter dated 23/11/2012, HDK & SK were advised to provide complete details regarding the transactions with supporting documents. HDK & SK, vide their letters dated 03/12/2012 each sought an extension of one month for submitting information, however no details were received by HDK & SK in this regard. (Copies of summons / letters sent to HDK / SK and their replies are placed at **Annexure 36**).
106. Statement of Shri Sunil Jeetmal Kothari (Director of HDK and SK) was recorded on 05/02/2016 and Shri Sunil Jeetmal Kothari was asked to explain the reason for not submitting the reply to SEBI summons dated despite seeking time of 1 month. Shri Sunil Jeetmal Kothari chose to seek extension of time of about 3-4 days in submitting the relevant details. Vide SEBI letter dated 16/02/2016, Sunil Jeetmal Kothari was directed to submit the relevant documents as undertaken by him during his statement recording. Vide letter dated 22/02/2016, Sunil Jeetmal Kothari submitted vague and incomplete details. Vide SEBI letter dated 03/03/2016, Sunil Jeetmal Kothari was once again directed to submit specific documents (as per Annexure to the letter), however, no documents / details were received by SEBI from Sunil Jeetmal Kothari. (Copies of letters sent to Sunil Jeetmal Kothari are placed at **Annexure 37**).
107. A brief summary of summons sent to and replies received from HDK / SK / Sunil Jeetmal Kothari is shown in table below:

Name of entity	Summons Date	Acknowledgement	Additional Comments
HDK International Pvt. Ltd	01/08/2012	Acknowledged vide its undated letter	Sought extension of 1 month in submitting replies.
HDK International Pvt. Ltd	21/09/2012	Acknowledged vide its letter dated 12/10/2012	Incomplete / vague details were provided
HDK International Pvt. Ltd	Letter dated 23/11/2012	Acknowledged vide its letter dated 12/10/2012	Sought extension of 1 month in submitting replies but no reply was received from HDK / SK.
Sunil Jeetmal Kothari (Director of HDK / SK)	Letter dated 16/02/2016	Acknowledged vide its letter dated 22/02/2016	Incomplete / vague details were provided

Sunil Jeetmal Kothari (Director of HDK / SK)	Letter dated 03/03/2016	Acknowledged vide its letter dated 07/03/2016	No reply provided
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108. From the above, it is concluded that HDK & SK have violated section 11C(2) & (3) of SEBI Act by failing to furnish true and complete information called for through SEBI summons.
109. Summons dated 01/08/2012 was issued to Viraj to get information in connection with the transfer of Rs.5 crore with ATL. However the same was returned undelivered with remarks not claimed. Accordingly, summons dated 21/08/2012 was issued to Viraj through ATL. Viraj, vide its letter dated 21/09/2012 confirmed the receipt of SEBI's summons dated 21/08/2012 and inter-alia sought an extension of 10 days' time in submitting the requisite information. However, no reply was received from Viraj. A brief summary of summons sent to and replies received from Viraj is shown in table below:

Name of entity	Summons Date	Acknowledgement	Additional Comments
Viraj Mercantile Pvt. Ltd.	01/08/2012	No	Summons returned undelivered
Viraj Mercantile Pvt. Ltd.	21/08/2012	Acknowledged vide its letter dated 21/09/2012	The entity vide letter dated 21/09/2012 sought extension of 10 days in submitting reply, however, no reply has been received from the entity.

110. From the above, it is concluded that Viraj Mercantile Pvt. Ltd. violated section 11C(2) and 11C(3) of SEBI Act by failing to furnish the information called for through SEBI summons. (Copies of summons sent to Viraj and reply received from Viraj are placed at **Annexure 38**)
111. Summons dated 01/08/2012 and 21/09/2012, calling for information, were issued to Maars and its then directors through ATL (as the letters sent to Maars earlier were returned undelivered). Vide letter dated 15/10/2012, Maars confirmed the receipt of aforementioned 2 SEBI summons and requested 15 days' time to submit the reply. However no reply was received from Maars till the submission of the investigation report. A brief summary of summons sent to and replies received from Maars is shown in table below:

Name of entity	Summons Date	Acknowledgement	Additional Comments
Maars Software International Ltd	01/08/2012	Acknowledged vide its letter dated	The entity vide letter dated 15/10/2012 sought extension of 15 days in submitting reply, however, no reply was received from the entity.
Maars Software International Ltd	21/09/2012	15/10/2012	

112. From the above, it is concluded that Maars Software International Limited failed to furnish information called for through SEBI summons thereby violated section 11C(2) and 11C(3) of SEBI Act. (Copies of summons / letters / emails sent to Maars alongwith the delivery proofs and replies received from Maars are placed at **Annexure 39**).
113. HDK International Pvt. Ltd., SK Universal Pvt. Ltd., Viraj Mercantile Pvt. Ltd. and Maars Software International Limited are, therefore, called upon to show cause as to why an inquiry should not be held against them and penalty be not imposed under Section 15A(a) of SEBI Act for the alleged violation of section 11C(2) and 11C(3) of SEBI Act.

Wrong Disclosure in the Prospectus

114. The following non-disclosures related issues were observed with regard to IPO of ATL:

a) **Bridge Loan** - 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 (**Annexure 40**), 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.

Further, from the bank account statements of ATL (**Annexure 41**), 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 false.

b) **Disclosure of Related Party transactions with Equastone which was a related entity** - 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 was not disclosed by ATL in its prospectus.

115. In view of above, the following is alleged:

- i) The company had submitted wrong disclosure in the prospectus w.r.t. utilization of bridge loan which is in violation of Regulation 57(1) and 60(7)(a) of ICDR Regulations.
- ii) Equastone, being a related entity of ATL, its financial transactions with ATL were not disclosed in the prospectus.
- iii) Further, the aforementioned wrong disclosure leads to misleading information in the prospectus which is in violation of Regulation 4(2) (f) and (k) of SEBI (PFUTP) Regulations, 2003.

116. In view of the above, ATL and the signatories to the prospectus (viz. Ravi Kumar Doraiswamy, Ramdas Janardhana Kamath, Subrahmanya Dandala Kannayya Reddy, Mathew James Manimala, Ashok Kumar Gopal Rao Jultha, Mohan Hosahally Ramakrishna, S. Sudheer, Shobha Sudhakar Acharya, Jamili Jalaiah) have violated the provisions of regulations 3 (b), (c), (d), 4(1), 4(2) (f) and (k) of PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act and regulation 57(1), 60(7)(a).

117. ATL, Ravi Kumar Doraiswamy, Ashok Kumar Gopal Rao Jultha, Mohan Hosahally Ramakrishna, Ramdas Janardhana Kamath, Subrahmanya Dandala Kannayya Reddy, Mathew James Manimala, S Sudheer, SHobha Sudhakar Acharya and Jamili Jalaiah are, therefore, called upon to show cause as to why an inquiry should not be held against them and penalty be not imposed under Section 15 HA of SEBI Act for the alleged violation of section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1), 4(2)(f), (k) and (r) of PFUTP Regulations and regulation 57(1), 60(7)(a) of ICDR Regulations.

10. The SCN was served upon the Noticees through Speed Post Acknowledgement Due (hereinafter referred to as “SPAD”) which was duly served to Noticee no. 1,2,3,4,8,11 and 12. Further, SCN was served upon Noticee no. 5,6,7,13,14,15,16,17 and 18 through Paper Publications dated January 30, 2018 as SCN sent to these Noticees via SPAD were returned undelivered as per Rule 7(3) of SEBI Adjudication Rules. Thus, Soft copies of the SCN were uploaded on SEBI website- www.sebi.gov.in for the information of the Noticees. a Notice was published in two newspapers one in a daily newspaper having nationwide circulation and another in a newspaper having circulation in the language of the region where that Noticee was last known to have resided or carried on business. Vide the aforesaid Notice, the Noticee no 5,6,7,13,14,15,16,17 and 18 were advised that their reply to SCN should reach the Adjudicating Officer within 14 days from the date of this publication in terms of the SCN. The details of publication of Notices in the newspapers in respect of the Noticee no. 5,6,7,13,14,15,16,17 and 18, are furnished hereunder:

Name of the Noticee	Name of the News Paper having nationwide circulation	Name of the regional news paper	Date of publication
S. Sudheer	Times of India, Bangalore edition	Vijayavani Bangalore Edition	30/01/2018
Shobha Sudhakar Acharya	Times of India, Bangalore edition	Vijayavani Bangalore Edition	30/01/2018
Jamli Jalaiah	Times of India, Bangalore edition	Vijayavani Bangalore Edition	30/01/2018



Viraj Mercantile Pvt. Ltd.	Times of India, Mumbai edition	Loksatta, Mumbai edition	30/01/2018
Maars Software International Ltd	Times of India, Chennai edition	Daily Thanthi, Chennai Edition	30/01/2018
Aarm Finser India Limited	Times of India, Bangalore edition	Vijayavani Bangalore Edition	30/01/2018
Ecologix Knowledge Solutions Pvt. Ltd.	Times of India, Bangalore edition	Vijayavani Bangalore Edition	30/01/2018
Equastone Properties Pvt. Ltd.	Times of India, Bangalore edition	Vijayavani Bangalore Edition	30/01/2018
Virtus tech Pvt. Ltd.	Times of India, Bangalore edition	Vijayavani Bangalore Edition	30/01/2018

Noticee no. 2 did not made any separate replies. However, Mr. Ravi kumar was corresponding on behalf of ATL during investigation and in the instant adjudication proceedings. Vide letter dated January 05, 2018, ATL requested time till January 31, 2018 to respond to SCN.vide letter dated January 30, 2018, ATL again requested time to respond to SCN on any day after the last week of February , 2018. Vide letter dated January 30, 2019, ATL requested to keep the instant proceedings in abeyance till the disposal of show cause notice dated 10/08/2017 issued in parallel 11b proceedings.

11. In the interest of natural justice and in terms of Rule 4 of Adjudication Rules, an opportunity of personal hearing was accorded to all the Noticees through WebEx platform due to Covid-19 Pandemic on October 11,12 and 13, 2021 vide hearing notice dated September 09, 2021.Hearing notice was duly delivered to Noticee no. 3,4,11 and 12 through SPAD except Noticee no. 1, 2, 5,6,7,13,14,15,16,17 and 18.



12.Delivery of Hearing Notice to Noticee no. 8,9 and 10 which have UAE address was requested through Office of international affairs, SEBI(OIA). Since none of the Noticee no. 8,9 and 10 fall under the jurisdiction of Dubai Financial Services Authority and none of the Noticee no. 8,9 and 10 is registered or regulated by Securities market regulator in UAE, the Securities and commodities Authority (SCA), UAE.it was not possible to serve the hearing notices to the Noticee no. 8,9 and 10. Also, the hearing notices sent through registered post returned undelivered.

13.The hearing notice sent to the Noticee no. 1, 2, 5,6,7,13,14,15,16,17 and 18 returned undelivered. In this regard, soft copies of the hearing notice were uploaded on SEBI website- www.sebi.gov.in for the information of the Noticees, a Notice was published in following Newspapers. Vide the aforesaid Notice, the Noticee no. 1, 2, 5,6,7,13,14,15,16,17 and 18 were provided with an opportunity of personal hearing scheduled in the month of November, 2021. The details of publication of Notice in the newspapers and the corresponding date of personal hearings in respect of the Noticee no. 1, 2, 5,6,7,13,14,15,16,17 and 18 are furnished hereunder.

Name of the Noticee	Name of the News Paper having nationwide circulation	Name of the regional news paper	Date of publication	Date and time of hearing
Ravi Kumar Doraiswamy (Chairman and Managing Director of ATL)	Times of India, Bangalore Edition	Vijayavani, Bangalore edition	29/10/2021	November 17, 2021 at 2.30 pm
Acropetal Technologies Ltd.	Times of India, Bangalore Edition	Vijayavani, Bangalore edition	29/10/2021	November 17, 2021 at 3.00 pm



S. Sudheer	Times of India, Bangalore Edition	Vijayavani, Bangalore edition	29/10/2021	November 17, 2021 at 3.30 pm
Shobha Sudhakar Acharya	Times of India, Bangalore Edition	Vijayavani, Bangalore edition	29/10/2021	November 17, 2021 at 4.00 pm
Jamli Jalaiah	Times of India, Bangalore Edition	Vijayavani, Bangalore edition	29/10/2021	November 18, 2021 at 10.30 am
Viraj Mercantile Pvt. Ltd.	Times of India, Mumbai Edition	Loksatta, Mumbai Edition	29/10/2021	November 18, 2021 at 11.00 am
Maars Software International Ltd	Times of India, Chennai Edition	Daily Thanthi, Chennai Edition	29/10/2021	November 18, 2021 at 11.30 am
Aarm Finser India Limited	Times of India, Bangalore Edition	Vijayavani, Bangalore edition	29/10/2021	November 18, 2021 at 12.00 noon
Ecologix Knowledge Solutions Pvt. Ltd.	Times of India, Bangalore Edition	Vijayavani, Bangalore edition	29/10/2021	November 18, 2021 at 2.00 pm



Equastone Properties Pvt. Ltd.	Times of India, Bangalore Edition	Vijayavani, Bangalore edition	29/10/2021	November 18, 2021 at 2.30 pm
Virtus tech Pvt. Ltd.	Times of India, Bangalore Edition	Vijayavani, Bangalore edition	29/10/2021	November 18, 2021 at 3.30 pm

14. Mr. Anil Shah, Advocate, the Authorized Representative of Noticee no. 3 (AR) appeared on scheduled date and time of hearing, that is on October 11, 2021 at 12:30 PM through Webex Call and reiterated the submissions made by the Noticee vide letters dated February 26, 2018 and October 07, 2021 as well as submissions dated 07.10.2021 made by AR.

15. I note that Noticee no. 4, 11 and 12 did not attend the hearing on scheduled date and time despite hearing notice being served to them

16. I note that, pursuant to paper publication of hearing notice, Noticee no. 1 & 2 viz. Acropetal Technologies Limited and Ravi Kumar Doraiswamy (Chairman and Managing Director of ATL) vide 4 Emails dated November 13, 2021 submitted the following :

Email 1:

With reference to the Publication by this Hon'ble office in the Newspaper published in Times of India, Bangalore Edition on 29.10.2021, a personal hearing has been accorded.

With reference to Acropetal Technologies Limited bearing reference No. SEBI/HO/EAD/EAD9/VKV/NK/P/OW/2021/23205/1 dated September 8 2021, it is informed that the erstwhile Managing Director Mr. Ravi Kumar is no longer representing the Company.

The DIN number of Mr. Ravi Kumar having been cancelled/suspended/ deactivated is not in a position to represent the Company.

In the above set out circumstances it would be just and necessary and in accordance with the principles of natural justice to issue Notice to the Registrar of Companies, Bangalore to represent the Company in the hearing.



In the light of the above necessary Orders be passed before the matter is taken up for hearing.

Email 2:

With reference to the Publication by this Hon'ble office in the Newspaper published in Times of India, Bangalore Edition on 29.10.2021, a personal hearing has been accorded.

With reference to Acropetal Technologies Limited bearing reference No.SEBI/HO/EAD/EAD9/VKV/NK/P/OW/2021/23306/2 dated September 9 2021, it is informed that the erstwhile Managing Director Mr.Ravi Kumar is no longer representing the Company.

The DIN number of Mr.Ravi Kumar having been cancelled/suspended/ deactivated is not in a position to represent the Company.

In the above set out circumstances it would be just and necessary and in accordance with the principles of natural justice to issue Notice to the Registrar of Companies, Bangalore to represent the Company in the hearing.

In the light of the above necessary Orders be passed before the matter is taken up for hearing.

Email 3:

I Ravi Kumar.D, erstwhile Managing Director, of M/s. Acropetal Technologies Limited do hereby authorise Mr.Mohammed Mujassim, Advocate, from M/s. Kiran S Javali firm, to represent, M/s. Acropetal Technologies Limited, us in our SEBI proceedings with regard to the show cause notice published in The Times of India Bengaluru edition on 29th october 2021 for attending the hearing through vedio conferencing before the authority on 17th November 2021 at 11:30 am in the matter of M/s. Acropetal Technologies Limited bearing SCN No.SEBI/HO/EAD/EAD9/VKV/NK/P/OW/2021/23205/1 dated 08th September 2021, on 17th November 2021 at 02:30 pm in the matter of Mr.Ravi Kumar Doraiswamy bearing SCN No.SEBI/HO/EAD/EAD9/VKV/NK/P/OW/2021/23306/1 dated 09th September 2021 and on 17th November 2021 at 03:00 pm in the matter of M/s. Acropetal Technologies Limited bearing SCN No.SEBI/HO/EAD/EAD9/VKV/NK/P/OW/2021/23306/2 dated 09th September 2021 and the following are his Email ID- mohammedmujassim@gmail.com and Mobile Nos.9880622713 & 8105547444 and all other proceedings that may arise in this regard including appeals, application for review, revision, reference etc. and to produce the documents necessary for such proceedings, and to receive all orders passed therein and



to apply for and get copies of all the documents, papers and orders in the above matter and if any on our behalf.

The explanations, statements and receipts given by virtue of this power will be binding on us.

Email 4:

This is with reference to the notice in the News Paper published in Times of India, Bangalore Edition on 29th oct 2021, with respect to the hearing accorded to the erstwhile Directors of Acropetal Technologies Limited.

With reference to Ravi kumar. D bearing reference No.SEBI/HO/EAD/EAD9/VKV/NK/P/OW/2021/23306/1 dated September 9th 2021, it is informed that the erstwhile Managing Director Mr.Ravi Kumar is no longer representing the Company.

In view of the fact that we do not represent the Company anymore and nobody is representing the Company, it would be in the interest of justice that the hearing be accorded after steps to represent the Company are taken.

17.Vide email dated November 13, 2021, Noticee No. 1 and 2 authorised Mr. Mohammed Mujassim, Advocate(AR), to represent M/s. Acropetal Technologies Limited however, AR failed to appear on scheduled date and time of hearing i.e., on November 17, 2021. Undersigned vide email dated December 13, 2021 granted last opportunity of hearing on December 27, 2021 through virtual meeting through Webex and also advised to submit reply to SCN by December 24, 2021. AR of Noticee no. 1 and 2 appeared on behalf of Noticee no. 1 and 2 on December 27, 2021 and requested for extension of time to file reply to SCNs. Noticee no. 1 and 2 request was acceded to by Adjudicating Officer and was granted one week's time to file reply to SCNs and AR was also informed that, if no reply to SCNs is received within the given time, then the matter would be decided on the basis of evidence available on record in terms of sub-rule (7) of rule (4) of the Adjudication Rules. Noticee no. 1 and 2 vide email dated January 03, 2022 sought 4 weeks' additional time to file reply to this show cause notice. Noticee was again given last opportunity to file reply to show cause notice till February 05,2022. Noticee no. 1 and 2 again vide email dated February 07, 2022 requested 2 months of time to file reply to SCN. Noticee no. 1 and 2 was granted last opportunity to file the reply to SCNs by February 24,2022. Noticee no. 1 and 2 again vide email dated February 24, 2022 requested two weeks of time to file reply to SCN citing following reason which also have been *inter-alia* mentioned in its previous replies:



“ the entire documents have been seized by the Central Bureau of Investigation and the registered office of the Noticee company were all the books of accounts have been maintained has been taken over by Edelweiss Assets Reconstruction Company Ltd., under the SARFAESI provisions. In view of the same, Mr. Ravi Kumar has no access to the documents and papers related to the company.

4. Several requests were made to Edelweiss Assets Reconstruction Company Ltd., to grant permission to access the requisite documents pertaining to the company, no response was received with regard to the same and in the absence of the documents, it is a constraint to reply to the said show cause notice.

5. Without prejudice to the above submissions the Noticee Company submits that the points that are required to be considered by this Hon'ble Authority:

a. that the Noticee Company due to account becoming NPA – All Noticee's Bank Accounts could not be operated;

b. that all Bank Accounts are frozen and all the operation of the Noticee company are stalled;

c. that Assets of the Noticee Company are valued in crores and the same cannot sold;

d. that the Noticee has been removed from Directorship by ROC; and

e. that if the Noticee Company is permitted to sell, it can clear all the liabilities.

6. The Noticee submits that the Noticee would submit a detailed reply on the above points once it receives the necessary documents to substantiate the above claim, we have made request to the respective authorities and hopeful in getting the documents soon, we request you to please grant us a last chance to make a detail reply in the interest of justice, we are praying as a last chance to grant us one month time to submit our detail reply.

18. Noticee no. 1 and 2 was granted last and final opportunity to file the reply to SCNs by March 10, 2022.

Vide email dated March 10, 2022, ATL has submitted the following:

- 1.** *By the above said show cause notice it is proposed to impose penalty under Section under Section 115HA of SEBI Act for the alleged violation of Section 12A(a), (b) and (c) of the SEBI Act read with Regulation 3(a), (b), (c), (d), 4(2)(f), (k) and (r) of PFUTP Regulations and Regulation 57(1), 60(7)(a) of ICDR Regulations.*
- 2.** *At the outset itself, the Noticee Company submits that the allegations in the show cause notice are based on wrong appreciation of facts.*



3. *The Noticee submits that this Hon'ble Adjudicating Authority had granted two weeks' time to file reply. However the Noticee Company could not file as the entire documents have not been received by Mr. Ravi Kumar and he had no access to the documents and papers related to the company.*
4. *Inspite of not getting the documents, with great difficulty trying to find the documents from various sources and preparing the reply. Due to the change in the legal council and delay in receiving the documents, we humbly request you to please grant us another two weeks time for the filing the reply.*

In view of the above, the Noticee Company request this Hon'ble Authority to grant two weeks of time to file reply to this show cause notice issued under Rule 4(1) of SEBI (Procedure for holding inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and under Rule 4 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995.

Since it was covid 19 pandemic period, it was all the more difficult to approach the bank authorities and therefore it is a humble request to grant time as sought.

19. I note that, despite Sufficient opportunities provided to Noticee no. 1 & 2 to submit reply to the allegations mentioned against Noticee no. 1 and 2 in the SCN. Noticee no. 1 & 2 have failed to reply to the allegations mentioned against Noticee no. 1 and 2 in the SCN.

20. The Noticee no. 3 and 18 vide their respective letters dated mentioned against their names, hereunder, have submitted their replies to the charges alleged against them in the SCN and has also attended the hearing on the scheduled date and time of hearing through WebEx platform.

Noticee No	Name of the Noticee	Reply Letter/s	Hearing date	Authorised Representative(AR) appeared on behalf of Noticee on the date of hearing
3	Mohan Hoshally Ramakrishna	26/02/2018, 07/10/2021	11/10/2021	Mr. Anil Shah, Advocate (AR)
18	Virtus tech Pvt. Ltd.	12/11/2021, 28/01/2022	18/11/2021	Dr (HC) K V Omprakash,

				Corporate Lawyer & CS (AR)
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21. The replies of the Noticees are summarized hereunder:

Noticee no.03:

Letter dated 26th February 2018

4. *I am engaged in the business of assisting individuals in obtaining housing loans, since 2001. I submit the following documents/ information as requested in your Notice, for your kind perusal and record:*
 - a. *My email ID: hrmohan2000@yahoo.com*
 - b. *My PAN card is enclosed as **Annexure A**.*
5. *I submit that Mr. Ravikumar Doraiswamy, who is the Chairman and Managing Director of Acropetal Technologies Limited, was my client and I have assisted him in obtaining housing loans on a few occasions in the past.*
6. *In or around [insert], Mr. Doraiswamy approached me to become a Director in his company Acropetal Technologies Limited, engaged in the business of software development and provision of information technology and product engineering services ("**Acropetal**"). I had no expertise in the field of business technology in which Acropetal operated. However, having regard to my relationship with Mr. Doraiswamy, and his insistence, I accepted the request of Mr. Doraiswamy to become a Director in Acropetal. I was, accordingly, appointed as an Independent Director in Acropetal, in 2006.*
7. *Right from the date of my appointment, I have made every effort and endeavor to acquaint myself with the affairs of Acropetal and to participate, to the extent required as a Director, in ensuring that its affairs are run and maintained in a lawful manner. In this context, I submit that I have had repeated discussions with Mr. Doraiswamy regarding the affairs of Acropetal. In the course of these discussions, he had consistently assured me that the affairs of the company are in order. He further indicated to me, in the period prior to the IPO, that since the business of the company was not very large and was being effectively managed by him, formal Board meetings were not required to be held. I have explained, in detail, the operational structure of the company in my statement dated 19 October 2017. The Directors of the Board, including myself, would meet informally, from time to time, to review the affairs of Acropetal. Needless to say, in view of my position as an invitee director with limited knowledge of the technical and operational matters, my oversight and involvement was of a general nature. However, to the best of my ability and understanding, I had, throughout, exercised utmost diligence and good faith in discharging my duties.*



8. *In this background, in 2010, when Mr. Doraiswamy first informed me that he is planning to make an Initial Public Offering of the shares of Acropetal with the recognized stock exchanges, I indicated to Mr. Doraiswamy my intention to resign as a Director from Acropetal owing to my lack of expertise and experience in the field of business technology as well as accounting and finance.*
9. *However, Mr. Doraiswamy insisted that I remain on the Board of Directors of Acropetal in view of my association with the company for the last several years. In view of this request, I remained on the Board. Even thereafter, in the period prior to the launch of the Initial Public Offering, I made full efforts to understand the proceedings relating to the IPO and ensure that the same were conducted in a lawful manner. Mr. Doraiswamy, at my repeated requests in this regard, consistently assured me that all legal requirements were being duly met and qualified advisors and consultants would be involved in the process. After having so satisfied myself, I signed the relevant papers relating to the IPO, including the Prospectus, as a Director.*
10. *The fact that my conduct is lawful and correct is established by the fact that no grievance has been raised or allegations made regarding the IPO process itself. The main grievance raised by your good office is that the funds raised in the IPO have been diverted thereafter. As such, my conduct as Director of the company prior to the IPO cannot be in question. To the limited extent that certain persons were introduced by me to Mr. Doraiswamy, who appear to have applied for issuance of shares of Acropetal in the IPO, I would respectfully submit that the inter se arrangements between Mr. Doraiswamy and those individuals were entirely their private arrangements and were unknown to me.*
11. *Even after the IPO, I respectfully submit that I continued to make my best efforts to enquire into the affairs of the company. I regularly participated in all Board meetings of the company of which I was notified. I have, in these Board meetings, duly noticed the matters for discussions and the reports submitted by the executive management of the company (if any). Throughout the course of my participation, as such, there has never been a single instance where any statement of material was made or furnished by the executive management which would have led to any apprehension that the affairs were not in order. Even apart from this, in my interactions with Mr. Doraiswamy, I have repeatedly informed him that my knowledge of business affairs is limited and requested him to ensure that the details of the day to day activities are carried on in a lawful and aboveboard manner.*
12. *It was only in or around the second half of 2013 that I first became aware that the executive management of Acropetal were not conducting the affairs of the company in an ideal manner. This came to my attention when, for the first time, certain issues relating to payment of statutory dues and dividends, which payments have been approved by the Board/ were required by law, had not been made timely. I immediately, addressed this aspect to Mr. Doraiswamy. He, however, assured me that the issues were minor ones and would be resolved in a few months. However, when I did not see any resolution of the issues and also found that my repeated requests as a Director to resolve the issues was going without heed, I resigned from the directorship forthwith.*



13. *Insofar as the specific allegations of financial irregularity relating to diversion of funds raised in the IPO is concerned, I respectfully submit that the said diversion was done by Mr. Doraiswamy without any reference to, or the knowledge of the Board of Directors. His actions constitute a fraud on the company itself. It is apparent that he made every effort to conceal, and successfully concealed, these facts from the Board and its members. A perusal of the Statement of Accounts for the relevant years will make it clear that the actions taken by Mr. Doraiswamy were well concealed from the Board. As such, it was impossible for me to know that Mr. Doraiswamy had committed such a fraud or to take any action in this regard. I submit that, in my circumstances of disinterest in the financial affairs of the company, there is no reasons for me to have sat quiet if I had become aware of such conduct. In fact, even a perusal of your notice clearly disclosed that there is not even an allegation that I have benefitted, nor has the Board approved of or benefitted from the same.*
14. *Insofar as my participation of the Audit Committee of the Board is concerned, I respectfully submit that I now realized that I was co-opted into this committee by Mr. Doraiswamy solely to fulfill the requirement that majority of its members be Independent Directors. In fact, my appointment is contrary to the Proviso to Section 177(2) of the Companies Act, 2013 insofar as I do not meet the requirement stipulated therein i.e. ability to read and understand the financial statements. I accepted my appointment to the Audit Committee solely at the earnest request of Mr. Doraiswamy.*
15. *As I have stated above, the fraudulent nature of Mr. Doraiswamy's conduct, together with my limited understanding of the accounting and business aspects of Acropetal, rendered it almost impossible for me to identify the diversion of funds, despite my best efforts and repeated inquiries regarding the affairs of the company. The extent of Mr. Doraiswamy's duplicitous conduct is manifested by a senior person such as Mr. Ramdas Janardhana Kamath (former Chairman, Canara Bank) himself not being able to identify such conduct although he was a member of the Board and the Audit Committee. I had, during my tenure as Director, taken much respite in the fact that Mr. Kamath also did not identify any issue or affair during his tenure on the Board and the Audit Committee.*
16. *The inability of the Committee to function was severely constrained by the fact that Mr. Doraiswamy, right from the date on which the Audit Committee was constituted, made a consistent effort to avoid the Committee performing its functions and engaging in proper deliberation. In the circumstances, it became impossible for the Committee to take any effective steps to discover any fraud. It was in this backdrop that both Mr. Kamath and I were constrained to resign on the first evidence that Mr. Doraiswamy was not acting in accordance with law. However, Mr. Doraiswamy refused to accept my resignation. I was forced, therefore, to file the same directly with the Registrar of Companies. It is pertinent to submit that my name has not yet been deleted from the record maintained with the Registrar of Companies, which I believe, to the best of knowledge, is owing to the failure of Acropetal to file necessary forms with the Registrar of Companies, and other non-compliances. The said fact has been submitted to your good office in my earlier statements and representations.*



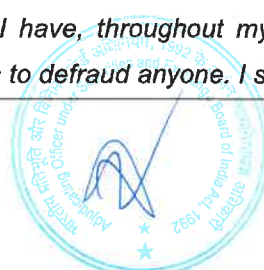
17. *I submit that the aforesaid facts and circumstances would make it clear that, during my tenure with Acropetal, I have only worked as a non-executive and Independent Director and has not been engaged in the day to day management and affairs of the said company, which fact has been submitted before your good office in my earlier representations. As submitted above, to the extent that my limited role and abilities permitted, I exercised due care and diligence in the discharge of my duties.*
18. *I further reiterate that during my tenure, I was given a sitting fee of Rupees Eighteen Thousand (INR 18,000) for attending the Board meetings. Apart from the aforesaid fee, I have not received any monetary benefits from Acropetal.*
19. *I submit, in this backdrop, that I was shocked to receive a summons from your office in respect of the investigation that was initiated against Acropetal and, inter alios, its Directors including myself, in respect of the aforesaid IPO. I submit that pursuant to the receipt of the summons, I appeared before your good office, at Mumbai, on 19 August 2016 and my statement on oath was recorded before the Investigating Authority.*
20. *I submit that, thereafter, I received a Show Cause Notice dated 10 August 2017 from the Enforcement Department of your office, to which I have issued a detailed reply on 19 October 2017.*
21. *I reiterate the submissions made by me in my statement dated 19 August 2016 and the reply dated 19 October 2017.*
22. *Your office has now issued the Notice alleging wrong disclosure in the Prospectus and commission of fraud, resulting in violations of various provisions of the SEBI Act, ICDR Regulations and PFTUP Regulations. I submit my reply to the specific allegations made against me in the notice, as follows:*
23. **Liability as a Director:** *In the Notice, it is alleged that I was a Director of Acropetal at the time the alleged irregularities occurred, and, hence, am liable therefor. I submit and reiterate that my appointment in Acropetal as in the capacity of a Non-Executive Director. I was not involved in the day to day business of the company. However, mere presence at the Board meetings cannot be said to be sufficient to establish that I was aware of the irregularities alleged and have consented to the same. I submit that Section 149(12) of the Companies Act 2013 provides that a Non-Executive and Independent Director can be held liable only in respect of such acts of omission or commissions by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he has not acted diligently. I submit that I have, since the day of my appointment as Independent Director in Acropetal, until my resignation, and even during the investigation conducted by your good office thereafter, been diligent in my duties. My lack of expertise in the field may constitute a disqualification for my appointment as an Independent Director and, consequently, as a member of the Audit Committee, but not an irregularity for making me liable for the alleged violations. I have been diligent in the performance*

of my duties as a Non-Executive and Independent Director. Mere presence at the Board meetings where the details of the transactions were not even discussed, is not adequate to attribute knowledge of the same to me, making me liable therefor.

I submit that I have been a victim of the fraud played by Mr. Doraiswamy, which fact has been reiterated before your good office in my earlier representations. It is settled law that if one of the Directors has committed fraud, mere fact that the other Directors were present at the meetings will not be adequate to draw a conclusion that they have also committed fraud.

I further reiterate and admit that I had introduced my business partner Mr. Vijaykumar, to Mr. Doraiswamy, and asked him to sign the documents placing reliance on the representations of Mr. Doraiswamy. However, I was, and am not, aware of the transactions, or the names of the companies, in respect of which Mr. Vijaykumar was requested to sign the documents. Furthermore, mere fact that Vijaykumar was introduced by me to Mr. Doraiswamy cannot establish any mala fides on my part.

24. **Liability as signatory of the Prospectus for wrong disclosure:** I submit that I did not have any financial expertise or knowledge over the implications of the statements and disclosures made in the Prospectus. The Prospectus was signed by me in the normal course of business, and under a bona fide belief that the same is in compliance of applicable laws. I was never aware of any financial irregularities at any stage.
25. **Liability as member of the Audit Committee:** I submit that I was appointed as a member of the Audit Committee by virtue of my appointment as an Independent Director in Acropetal. I was not involved in the financial transactions of Acropetal and was unaware of the irregularities. I submit that as per the mandate of Section 177 of the Companies Act, 2013, members of the Audit Committee shall be able to read and understand the financial statements. I have reiterated in all my representations before your good office that I lack financial expertise and experience, and I was appointed as an Independent Director in Acropetal not on the basis of my skills or expertise in the field but merely because of my relationship with Mr. Doraiswamy. In view of my lack of expertise in understanding financial statements, the constitution of the Audit Committee itself becomes irregular. The annual reports of the company were prepared on the basis of the reports submitted by the auditors. In any event, as I have not been part of the discussions pertaining to the fund flow for the IPO, nor have I been informed of the transaction, the irregularities, if any, were not noticed in the audit report, and hence, not brought to the notice of the Audit Committee.
26. I submit that I have diligently co-operated with the investigation conducted by your office and submitted all documents required for inspection. I reiterate before your office that I was neither involved in the financial transactions of Acropetal, nor was I informed of the financial irregularities that have now occurred, as are set out in your Notice. I have worked with Acropetal merely in the capacity of a non-executive Director. I have never been a signatory of the bank accounts maintained by Acropetal, and have not had access to the bank statement and transactions details. I have, throughout my tenure, acted on the representations of Mr. Doraiswamy, without any mala fides to defraud anyone. I submit that my liabilities



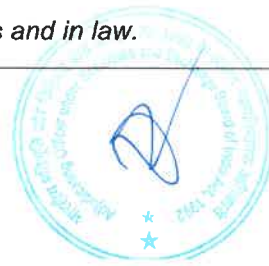
for the acts of the company are limited to the extent of my involvement in the impugned acts and not beyond that. The alleged irregularities were not within my knowledge, and, hence, are not attributable to me.

27. I submit, above all, that I myself have been drawn into this fraud perpetrated by Mr. Doraiswamy. He has committed a fraud against me and all other Directors and stakeholders by utilizing our goodwill and ignorance to deceive us. I have neither benefited monetarily or professionally by participating in Acropetal's affairs. The very initiation and continuation of these proceedings is hugely burdensome and imposing unbearable financial and emotional strain on me and my family. I respectfully submit that there is no basis to proceed any further against me and, to do so, would constitute a gross miscarriage of justice

Letters dated October 07, 2021:

Letter 1:

- a. I say that I am Bachelor of Business Management from Upendra Pai Memorial College, Udupi, graduated in the year 2000.
- b. I say that I was appointed as an Independent Director of Acropetal from 2006 to 14.05.2014 as already submitted in Para 6 of my submissions dated 26.02.2018.
- c. I say that I had resigned from the position of Independent Director of Acropetal vide letter dated 14.05.2014 as already submitted in Para 13 of my submissions dated 26.02.2018.
- d. I say that pursuant to my resignation, I had filed Form DIR-11 with the Registrar of Companies; this fact has been recorded in the Director's Report of Acropetal for 2014 and 15. However, Acropetal has failed to file my Form DIR-12 and resultantly my name has not been deleted from the records of Acropetal maintained with the ROC and the same can be clearly inferred from Para 14 of my submissions dated 26.02.2018.
- e. At the outset, I deny that I have violated any provisions of 3 (a), (b), (c), (d) and 4(1), 4(2), (f), (k) and (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**") read with section 12 A (a), (b) and (c) of the SEBI Act and Regulation 57(1) and 60(7)(a) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations 2009 (herein after referred to as "**ICDR Regulations**") in the (i) bidding process in the IP of Acropetal (ii) examination of disclosures made by Acropetal in the offer documents/prospectus and deviations from the objects of the issue, if any and (iii) examination of fund flow from IPO proceeds as wrongly alleged.
- f. I state that the findings in the said SCN as against me are based on totally incorrect assumptions and presumptions and are therefore not sustainable on facts and in law.



g. It is submitted that I should not be construed to have accepted or admitted anything stated in the said SCN except save and except where the same has been expressly admitted by me in this reply.

h. I hereby place on record my submissions to the SCN as under:

Preliminary submissions on findings / observations of the SCN as against me:

I state that I have limited my submissions to such paragraphs in the SCN as are attributable to me and I have refrained from addressing to any observation/violation that have been attributed in the SCN to other entities since the same does not concern me and the contents thereof are irrelevant to my case.

Reply to Para 1 to 42 of the SCN:

The contents of the para 1 to 42 of the SCN may be matters of record and calls for no comments from my end since the same does not pertain to me, save and except, Para 3 wherein it is rightly concluded that I am an Independent Director of Acropetal. I once again deny that I have violated any provisions of 3 (b), (c), (d) and 4(1), 4(2) (f), (k) and (r) of PFUTP Regulations read with section 12 A (a), (b) and (c) of the SEBI Act and Regulation 57(1) and 60(7)(a) of the ICDR Regulations as wrongly alleged in Para 3.1 and 3.3 of the SCN.

Reply to Para 43 of the SCN:

I state that the SCN has rightly observed in the Para 43 of the SCN that I was a Non Executive Independent Director (hereinafter referred to as "NEID") of Acropetal as is evident from the Annual Report of Acropetal for FY 2010-11 and 2011-12.

Para 44, 45 and 46 of the SCN:.....

Reply to 44, 45 and 46 of the SCN:

The contents of the said Paras are substantially true. I reiterate what has been stated by me on oath at Para 13 that I was not aware and do not have details of what documents were signed by my friend Mr. Vijay Kumar Sampat. I further reiterate that besides sitting fees per meeting of the Board of Directors and the Audit Committee, no benefit had accrued to me as has been stated by me on oath at Para 15. I once again state that I had not applied for a single share in the IPO of Acropetal as is apparent from Para 17.

Para 47, 48, 49, 50 and 51 of the SCN:.....

Reply to Para 47, 48, 49, 50 and 51 of the SCN



I deny that I had failed to uphold ethical standards of integrity and probity and safeguard the interest of all stakeholders, particularly, minority shareholders in my capacity as NEID of Acropetal. Para 47 has proceeded to make a bald allegation that by making my partner sign certain papers relating to Corus Limited and Interbrew Networks Limited, I have acted contrary to what was expected of me as a NEID. The SCN is grossly silent on what ought to be the responsibilities and obligations of a NEID. Neither is any clarification forthcoming in the SCN as what was “expected” of me. On a perusal of the dictionary meaning of “expected”, it is evident that expectations come with certain reasons or justifications, and in this case, there is no justification provided. The definition as in the dictionary is reproduced for reference:

“Expect

verb (used with object)

to look forward to; regard as likely to happen; anticipate the occurrence or the coming of

to look for with reason or justification

Informal. to suppose or surmise; guess”

I state that there is no codified code of conduct prescribed in law that I ought to have followed. In the absence of the same, I deny that as a member of the Audit Committee, I had failed to perform my duty in relation to reviewing the utilization of IPO proceeds and apprising the Board about misutilization of IPO proceeds, as has been wrongly alleged.

The SCN is grossly silent as to what was required of me in terms of the so called “duty” to review the utilization of IPO proceeds and apprising the Board about misutilization of IPO proceeds .I vehemently deny the allegation that as a member of the Audit Committee, I was also a party to “such fraud”, as has been wrongly alleged.

Substantial submissions on findings / observations of the SCN as against me:

1. *I submit that the SCN is deemed to have been issued to me in my capacity as NEID which fact has been rightly note and aptly admitted in the SCN. Para 49 of the SCN has rightly observed that Shri Ravi Kumar Doraiswamy, the Chairman and Managing Director of Acropetal had played a fraud and misled the investors by deviating from the objects of the issue and not utilizing the funds raised through IPO towards the objects as set out in the prospectus. I state that since the SCN has so concluded that Shri Ravi Kumar Doraiswamy, the Chairman and Managing Director of Acropetal had played a fraud and misled the investors, the SCN ought not to have proceeded against me at all. I state that for this reason alone the proceedings against me should be dropped.*
2. *The specific allegations against me are for the limited role that I have played as an NEID and as such none of the allegations against me stand established as is more specifically detailed hereinafter. I once*



again wish to place on record the “e-chat” which forms part as Annexure 3 to my submissions dated 19.10.2017 in case of parallel proceedings against me before the Ld. WTM, order dated 27.09.2019 **(Copy attached vide Annexure 1)** wherein Shri Ravi Kumar Doraiswamy has acknowledged and admitted that I am in no way responsible for the allegations made out in the SCN which fact speaks volumes of the conduct of Shri Ravi Kumar Doraiswamy which in turn translates into my limited role in the said allegations. I repeat that I too was a victim of the fraud played by Shri Ravi Kumar Doraiswamy. I further submit that as stated in Para 6 of my aforesaid submissions dated 19.10.2017, I had never been a signatory to any of the bank accounts of Acropetal and further that I did not have any access to the bank statements and transaction details.

3. I rely Section 2(30) of the Companies Act, 1956 which provides that an officer includes any Director, Manager, Secretary or any person in accordance with whose directions or instructions, the Board of Directors or any one or more of the directors is or are accustomed to act. Section 2(30) of the Companies Act, 1956 provides that an officer of the company who is in default shall be liable to punishment or penalty and defines “officer who is in default” which shall mean all the following officers of the Company, namely

(a) the Managing Director or Managing Directors;

(b)

(g) where any company does not have any of the officer specified in clauses (a) to (c), any director or directors who may be specified by the Board in this behalf or where no director is so specified all the directors;

I submit that thus by implication, if a company has any officer specified in clause (a) above, the other directors will not be held as officer in default per Section 5(g) of the Companies Act, 1956. Further, it was also not the case in the SCN that I was in-charge or control of the day-to-day affairs of Acropetal and there is no finding to that effect, hence I can never be held responsible. Needless to say, the Hon'ble Supreme Court has held that “to be in-charge” would mean that the person should be in overall control of the day-to-day business of the company”.

I wish to quote that in **Girdhari Lal Gupta's case** [1970 SCC (2) 530][FERA Case] **(Copy attached vide Annexure 2)**, the Hon'ble Supreme Court has construed the expression “a person in-charge and responsible for the conduct of business of the company” shall mean the “person in overall control of the day-to-day business of the company”.

Further, in **R.K. Khandelwal v State** [1965 CriLJ 439] **(Copy attached vide Annexure 3)** the Hon'ble Supreme Court referred to the judgment in Girdhari Lal Gupta's case (supra) and succinctly stated as under:

“In companies there can be directors who are not in charge of, and responsible to the company for the conduct of the business of the company. There can be directors who merely lay down the policy and



are not concerned with the day-to-day working of the company. Consequently the mere fact that the accused person is a director of the company, shall not make him criminally liable. To put it different for the offences committed by the company unless the other ingredients are established which make him criminally liable. To put it differently, no director of a company can be convicted of the offence under section 27 of the Act unless it is proved that the sub-standard drug sold with the consent or connivance or was attributable to any neglect on his part, or it is proved that he was a person in charge of, and responsible to the company for the conduct of the business of the company.”

Thus, I state that the analogy of vicarious liability of a NEID squarely applies to the present proceedings since there was neither any consent nor connivance from my side nor was it attributable to any neglect on my part.

4. I further state that since the alleged violations were not committed with my consent/knowledge/connivance and that I was not negligent. I crave to quote Section 633(1) of the Companies Act, 1956 which is an enabling provision for a director to seek relief from the court by proving that he had exercised all due diligence to prevent the commission of an offence and had acted honestly and responsibly and that the director ought to be excused. I state that as has already been stated in my written submissions, I was neither aware of nor otherwise mandated to be aware of the day-to-day affairs of Acropetal.

I state and submit that since I could never be deemed to be an officer in default as per Section 5 as a consequence of which whether the alleged violation was wilful or not does not arise. I quote **C.V. Siva Prasad v Registrar of Companies** [(1997) 2 Comp J 205 (AP) and/or 1997 88 CompCas 420 AP] (Copy attached vide Annexure 4) in support of my contentions.

I place reliance on the judgment in **Smt. G. Vijayalakshmi v SEBI** [(2000) 25 SCI 183 (AP) and/or 2000 100 CompCas 726 AP] (Copy attached vide Annexure 5) wherein it has been settled that criminal liability of ordinary directors would arise only in respect of a company which has no Managing Director. I state that it is on record that Shri Ravi Kumar Doraiswamy was the Managing Director and thus no liability could be fastened to me.

Needless to say that the aforesaid judgment pertains to criminal liability whereas the present SCN is for violation of the SEBI Act and the Regulations framed there under. It is an admitted rule that the vigour of criminal liability is far more than a civil liability and as such the SCN needs to be withdrawn against me.

5. I submit that ordinarily, courts have inclined to relieve the directors who are not concerned with day to day management of a company unless there is clear evidence to the contrary.



In Mahalderam Tea Estate Pvt Ltd v D.N. Prodhan [1979 49 CompCas 529 Cal][Employees Provident Fund Case] (Copy attached vide Annexure 6), wherein all the directors of the company were prosecuted for the offence, the Hon'ble Calcutta High Court held that under the said section a company is made primarily liable for an offence committed under Act. The liability may be extended to other persons vicariously only under the conditions laid down in the section. A director of a company may be concerned only with the policy to be necessarily be immune from such prosecution.

Thus, it has to be established by placing before the court part in running of the business of the company and a mere bald statement that the accused persons are directors of the company and hence responsible for the conduct of the business and management of the company will not do.

All the officers of the company not in direct charge of management of the business are immune from the liability for the offence, unless they have contributed to its commission by consent, connivance or neglect. Thus, all directors or officers of the company do not come within the mischief of subsection (1) of the standard penal provision.

I submit that from in the aforesaid paragraphs it is amply convincing that it is only the directors who are concerned with the day to day management of the company that should ordinarily be held liable for company's offences and no liability could ever be cast on me in the capacity of NEID.

6. *I say that as NEID, the directors who are appointed on the board by virtue of their special skills, expertise, profession or knowledge or those who are merely for name sake or in advisory capacity would virtually be outside the net of liability for the company's offences except where, of course, it is established that the director concerned was in charge of and responsible to the company for the conduct of its business, which, as already mentioned is a question of evidence and depend upon facts and circumstances of each case. I therefore state that it is virtually an impossibility to allege the same for the simple reason that as a matter of fact these professional directors have hardly any hand in the day to day functioning and management of the company. In this connection, I wish to place on record, Circular No. 2/13/2003/CL-V dated 25.03.2011 issued by the Ministry of Corporate Affairs (Copy attached vide Annexure 7) and addressed to all Regional Directors, all Registrars of Companies and all Official Liquidators clarifying that the Registrars of Companies and others should take extra care in examining cases where independent directors are identified as "officer in default". The Circular directs that the ROC should examine whether the violation has taken place with the knowledge attributable through Board process, with his consent or connivance and whether he acted diligently or not.*

I state that the Ministry of Corporate Affairs too has taken a pragmatic view on the role and responsibilities of independent directors and hence I pray that the same premise should apply to me.

7. *I further wish to place on record, RBI Circular under reference DBR. No. CID. BC.89/20.16.001/2014-15 dated 23.04.2015 (Copy attached vide Annexure 8) on Collection and Dissemination of*

Information on Defaulters. Para 3 thereof makes it abundantly clear that a Non- Whole Time Director should not be considered as a defaulter unless it is conclusively established that the default had taken place with consent or connivance.

In all fairness, the Reserve Bank of India has also adopted a practical view in labelling defaulters and excluding Non- Whole Time Directors from its purview which is my case in the present proceedings.

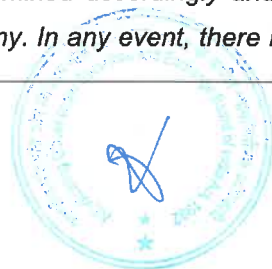
8. *I crave leave to rely on Circular no. No. 27 dated 28.02.2002 issued by the Office of the Chief Metropolitan Magistrate, Esplanade Mumbai (Copy attached vide Annexure 9) communicating concern that many a time process is issued against Non-Executive Directors who are not responsible to the Company for the conduct of business of the company which is causing hardship to such Non-Executive Directors in attending courts, engaging lawyers for defence and filing discharge applications.*

The Circular mandates that the Magistrate should find out prima facie if, the Non-Executive Director is in any manner responsible for the conduct of the business of the company and thereafter consider and decide whether process should be issued or not against such Non-Executive Directors.

It may be appreciated that a liberal interpretation has been granted in criminal matters on the responsibility of Non-Executive Directors. I state that the gravity of the issue of the present SCN is far less than criminal liability.

9. *Further I place reliance on Order no. WTM/GA/54/ISD/02/06 dated 16.02.2006 of the WTM, SEBI in the matter of Home Trade Limited. (Copy attached vide Annexure 10) We quote from the said order:*

*5.5 As regard the vicarious liability of the Directors of the HTL for the market manipulations, it has to be satisfied that the persons were (at the time of the contravention) was in charge of and responsible o the company for the conduct of the business. Section 27 of the SEBI Act, 1992 states that a person would be deemed to be guilty of offence only when he was in charge and was responsible to the company during the relevant period. In this regard, Hon'ble SAT in **Rahul Shah's case** [(2004) 55 SCL 416] (SAT) (Copy attached vide Annexure 11) has observed that no hard and fast rule exists whereby it could be said as to when a director will be vicariously responsible for the acts of directors in charge of day to day affairs of company. However, even non-executive directors shall be made liable where Non-executive directors are commonly appointed so as to watch and keep a check on the whole time directors, to provide a view of an impartial outsider to bring the benefit of their experience to the company, to act as a figure head (particularly in the case of a non-executive chairman), to add credibility to the company with the public and shareholders, though the inference has to be drawn from the facts and circumstances surrounding each case. Thus, the vicarious liability turns on the merits of each case and has to be determined accordingly and the case cited is in context of prosecution proceedings against the company. In any event, there has to be a modicum*



of evidence linking the said directors with the manipulation and in its absence, complicity cannot be presumed.

5.6 Similarly, in **State of Haryana v Brij Lal Mittal** [(1998) 5 SCC 343], (Copy attached vide Annexure 12) the Hon'ble Supreme Court has observed as follows: "it is thus seen that the vicarious liability of a person for being prosecuted for an offence committed under the Act by a company for the conduct of its business. Simply because a person is a director of the company it does not necessarily mean that he fulfils both the above requirements so as to make him liable.

Conversely, without being a director, a person can be in charge of and responsible to the company for the conduct of its business. From the complaint in question we, however, find that except a bald statement that the respondents were directors of the manufacturers, there is no other allegation to indicate, even prima facie, that they were in charge of the company and also responsible to the company for the conduct of its business.

5.7 The above judgment was adhered by the Hon'ble Supreme Court in its recent judgment in **S.M.S Pharmaceuticals v/s Neeta Bhalla** [AIR 2005 SC 3512] (Copy attached vide Annexure 13) where it was held that merely being a director in a company is not sufficient to make a person liable under section 141 of Negotiable Instruments Act, 1881. Director in a company cannot be deemed to be in charge and responsible for conduct of its business at the relevant time, requirement of section 141 is that the person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant period.

6.1 It is, therefore, concluded that there is no specific evidence against any of these directors that they were in control of the affairs of HTL during the first or seconds phase of manipulations. On the basis of the allegations in the show cause notice, it is clear that no such case has been made out and further there is no evidence to suggest that there is an indication of their duties and obligations or collusion and therefore these directors cannot be held liable for acts of the HTL or acts of the Director Ketan Sheth and other Executive Directors acting for and on behalf of the company.

6.2 in the absence of corroborative evidence for their involvement in the manipulation in the scrip of HTL, I am inclined to give them a benefit of doubt and therefore no directions are required.

Accordingly, in exercise of the powers delegated to me under Section 19 of the SEBI Act, 1992 read with section 11 and 11B, I hereby dispose off the case against the aforesaid directors without any direction.

Needless to say, SEBI too has taken a liberal interpretation in the matter and has rightly passed the captioned order, relieving Non-Executive Independent Directors.



10. I crave leave to rely on the judgment by the Hon'ble Delhi High Court in the case of **S.S. Thakur v SEBI/MANU/DE/1024/2013 (Copy attached vide Annexure 14)** dealing with the issue of vicarious liability of ordinary director for violation of SEBI Act which has observed as under:

"22. However, as far as the other appellants are concerned though there is evidence in the form of the reply sent by the Company through Shri. P.S Chaudhary to show that they were directors of the Company, there is no evidence which would show that they were also in charge of and responsible of the appellants other than Shri. P.S. Chaudhary, SEBI was required to prove not only that the persons in charge of and responsible to the Company conduct of its business. No evidence to this effect, however, has been led by SEBI this is also not the case of the SEBI that connivance of the appellants other than Mr. P.S. Chaudhary and is attributable to some neglect on their part. In these circumstances, the conviction of the appellants, Mr. D.S. Thakur, Mr. S.S. Thakur and Mr. Roop Lal Kaundal cannot be sustained."

I state that it is an admitted fact and the SCN has also concluded that I was an Independent Director of Acropetal and as such I cannot be held responsible for the alleged violations, if any, by Acropetal and/or Shri Ravi Kumar Doraiswamy.

11. I further crave leave to rely on Circular No. List/JJB/DSS/2000 dated 11.04.2000 (**Copy attached vide Annexure 15**) issued by the Stock Exchange Mumbai to all listed companies. On Page 8, reference has been drawn to Clause 49 of the Listing Agreement being the Clause on "Corporate Governance" which is reproduced below:

I. Board of Directors

A. The company agrees that the board of directors of the company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising of non-executive directors. The number of independent directors would depend whether the Chairman is executive or non-executive. In case of a non-executive chairman, at least one-third of board should comprise of independent case of an executive chairman, at least half of board should comprise of independent directors.

Explanation: For the purpose of this clause the expression 'independent directors' means directors who apart from receiving director's remuneration, do not have any other material pecuniary relationship or transactions with the company, its promoters, its management or its subsidiaries, which in judgment of the board may affect independence of judgment of the director.

It may be appreciated that the Stock Exchanges too as also addressed the expression "Independent Directors" and has expressly excluded Independent Directors and I submit that I fairly fall under the said expression.



12. I place reliance on the on the order dated 09.08.2019 passed by the Hon'ble SAT in the matter of Sayanti Sen (**Copy attached vide Annexure 16**), as discussed at length hereunder:

" 8. The WTM held that even though the appellant may not be involved in the decision making process, nonetheless, the appellant cannot wriggle out of her responsibility as a Director of the Company and plead ignorance of the affairs of the Company and therefore held that being a Director the appellant was responsible for the prospectus and for compliance of Section 56(1), 56(3) and 56(4) of the Companies Act and was liable jointly and severally under Section 73(2) of the Companies Act on the ground that every Director of the Company, were officers in default, and were liable to repay the money along with interest.

" 9. In our view the order of the WTM is patently erroneous and against the provisions of Section 73(2) read with Section 5(g) of the Companies Act. The WTM has proceeded with the assumption that in the absence of any officer being nominated as an officer in default then all the Directors were liable under Section 5(g) of the Companies Act. The approach adopted by the WTM ignoring the evidence that has come on record makes the impugned order illegal and unsustainable.

"11. Thus, when the Company is the offender, vicarious liability of the Directors cannot be imputed automatically. It is the cardinal principle that there can be no vicarious liability unless the statutes specifically provides for it.

"15. ... 15. In *Agritech Hatcheries & Food Ltd. vs Valuable Steels India Pvt. Ltd.*, (1999) 96 Com Cases 534 (Mad), it has been held that where there is a managing or whole time director or a manager, it would be an abuse of the process of the court if proceedings are launched against the ordinary directors without examining their role in default.

Similar view was also reiterated in *Smt. G. Vijaylakshmi & Ors. vs. SEBI* (2000) 100 Comp Cases 726 (AP)]. The reason is not far to see.

It is not necessary that every director is required to be penalized merely because he is a director on the ground that he is responsible for the affairs of the company. If the director can explain that he had no role to play in the alleged default or that he did not perform his duties assigned to him under the agreement of his appointment, the presumption of guilt and thereafter penalty cannot be fastened upon him.

" 17. Ordinarily directors of a company are not allowed to be prosecuted under Section 220 of the Companies Act for default in filing the accounts when the company has a managing director at the relevant time as has been held in *Ravindra Narayan vs ROC, Jaipur*, (1994) 81 Com Cases 925 (Raj). This decision was accepted by the Department of Company Affairs and a circular dated 24.06.1994 was issued accordingly.



"18. The contention that the appellant being a Director of the Company cannot disown responsibility for the acts of the Company is misconceived. In the instant case, the power under Section 11 or 11B of the SEBI Act has been exercised debarring the appellant from accessing the securities market on the ground that the appellant was responsible for the acts of the Company and thereby in an indirect manner has introduced the concept of strict liability of vicarious liability under Section 11 or 11B of the SEBI Act. In this regard it would be, thus, relevant to peruse Section 27 of the SEBI Act which reads as follows:-

"27(1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection

(1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Section 27 of the Act states that a person is deemed to be guilty of an offence on condition that he was in charge and responsible to the company. The proviso to Section 27 states that:

"Provided that nothing contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence."

19. The spirit of Section 27 of the SEBI Act would indicate that if a finding is given that the appellants have nothing to do with the day today affairs of the Company then they cannot be held guilty of any violation as there is no such thing as vicarious liability under Section 11B of the SEBI Act.

21. In this regard the Ministry of Corporate Affairs while initiating prosecution against the Directors under the Companies Act came across a lot of hurdles as to who was an officer in default and whether any Director could be prosecuted without there being evidence with regard to being responsible for the affairs of the Company.

In this regard, the Ministry of Corporate Affairs issued a Master Circular dated 29th July, 2011 on prosecution of Directors and clarified that the prosecution should be filed primarily against the Managing Director and against such Directors who were in charge and responsible for the affairs of the Company.

It was clarified that extra care should be taken in examining such cases and no such Director should be held liable for any act of omission or commission by the Company which would constitute a breach or violation of any provisions of the Companies Act which had occurred without his knowledge or consent or where he had acted diligently in the Board process.

26. In the light of the aforesaid the WTM has held that the Company has violated provisions of Section 73(2) of the Companies Act and has therefore in the same breadth has booked all the Directors to be responsible for the day today affairs of the Company. This approach as stated earlier was wholly incorrect.

27. Thus, the WTM was required to arrive at a specific finding that a Director or Directors were responsible for the acts of the Company. The mere fact that a person is a Director would not make him automatically responsible for refund of monies under Section 73(2) of the Companies Act.

- 13. I further to place reliance on the order dated 16.04.2019 passed by the Hon'ble SAT in the matter of Yogesh Gemawat (Copy attached vide Annexure 17) wherein the Tribunal has recorded that as under:**

"in absence of any document to show that any director was specified as per Clauses (a) to (c) of Section 5 of the Companies Act or any valid document to show that any person was authorized by the Board of Directors, the appellant could not escape the liability as per Clause (g) of Section 5 of the Companies Act."

- 14. I further submit that the Hon'ble Supreme Court in the matter of SEBI vs. Gaurav Varshney (2016) 14 SCC 430 (Copy attached vide Annexure 18) has held as under:**

"a company being a juristic person, all its deeds and functions are the result of acts of others. Therefore, officers of a company who are responsible for acts done in the name of the company are sought to be made personally liable for acts which result in criminal action being taken against the company. It makes every person, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of business of the company, as well as the company, liable for the offence. The liability arises from being in charge of and responsible for the conduct of business of the company, liable for the offence.

The liability arises from being in charge of and responsible for the conduct of business at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status."



15. I crave leave rely on the order dated 14.02.2019 passed by the Hon'ble Securities Appellate Tribunal in Appeal No. 291 of 2017 in the matter of **Pritha Bag v/s SEBI**, wherein the appeal was allowed and impugned order quashed in relation to NIED on the grounds that the Ld. WTM failed to consider the provisions of Section 5 of the Companies Act 2013. **(Copy attached vide Annexure 19)** We quote from the said order:

"A perusal of the aforesaid provision indicates that the expression "officer who is in default" would mean the following officers, namely, the managing director or managing directors, whole time director or whole time directors, the manager, the secretary or any person in accordance with whose directions or instructions the Board of Directors of the company accustomed to act and would also include any person charged by the Board of responsibility of compliance with the provisions of Act. Section 5(g) of the Act further stipulates that where the company does not have any of these officers specified in clauses (a) to (c) in which case all the directors would be deemed to be an officer in default."

"In the light of the aforesaid provision, the appellant had categorically submitted before the WTM that she was appointed as an additional director by the managing director and that she was not responsible for the affairs of the company. The appellant further stated that she did not attend any meeting and was never connected with the issuance of RPS. It was urged that the WTM without considering the submissions of the appellant has mechanically and without any application of mind has illegally held that since the appellant was a director, and was responsible for affairs of the company and was liable to the contravention found against the company and, therefore, was jointly and severally responsible for making a refund along with interest under Section 73(2) of the Companies Act."

"Having heard the learned counsel for the parties, we are of the view that the WTM has failed to consider the provisions of Section 5 of the Companies Act and has mechanically held that the appellant was responsible jointly and severally for making the refund alongwith interest under Section 73(2) of the Companies Act. Unless and until a finding is given that the appellant is an officer in default, the mandate provided under Section 73(2) cannot be invoked against the appellant."

16. I crave leave to rely on the order dated 28.06.2021 passed by the Hon'ble Securities Appellate Tribunal in Appeal No. 389 of 2021 in the matter of **Prafull Anubhai Shah v/s SEBI**, wherein it was rightly observed that material evidence is required to hold the NEID liable for fraud. **(Copy attached vide Annexure 20)** We quote from the said order:

"We find that the Ministry of Corporate Affairs had issued a circular dated March 25, 2011 directing that extra care should be taken in examining cases where independent directors are identified as "officers in default". The circular further directs that the Registrar of Companies (RoC) should examine whether any violation had taken place with the knowledge attributable through boards process with his consent or connivance and whether he acted diligently or not. The Ministry of Corporate Affairs further issued a circular dated March 2, 2020 indicating that civil or criminal proceedings should not



be unnecessarily initiated against the independent directors or non executive directors unless sufficient evidence exists to the contrary. We also find that Reserve Bank of India issued a circular dated April 23, 2015 indicating that non-whole time director should not be considered as a defaulter unless it is conclusively established that the default had taken place with his consent or connivance."

"Thus cogent evidence must come forward to the effect that a non executive non promoter independent director was aware of the fraud that had been played by the Company or that he was involved in the issuance of the GDR or that GDR was being issued with his connivance. Only then such non executive non promoter independent directors should be booked. Merely because he was part of the resolution of the Board of Directors would not make him liable."

I submit that the importance of evidence/knowledge/ connivance in relation to the NEID has been highlighted again in the aforementioned case, and in the absence of such facts, there stands to be no reason to hold the NEID liable.

17. I further crave leave to rely on the order dated 30.08.2021 passed by the Hon'ble Securities Appellate Tribunal in Appeal No. 561, 562 and 563 of 2021 in the matter of **Priyadarshan Mehta, Vilas Joshi and Rajbhushan Dixit vs SEBI**, wherein it was rightly concluded that the order passed in the matter of Prafull Shah would squarely apply to NEID who are signatories to the resolution of the board of directors. **(Copy attached vide Annexure 21)** We quote from the said order:

"3. The only charge against the appellants is that they were signatories to the resolution of the board of directors which authorized the issuance of the GDR issues and which authorized the Managing Director to execute the necessary documents. Apart from that there is no finding that the appellants had any other role to play in issuance and implementation of the GDR issue.

4. In our view the controversy involved in the present appeals is squarely covered by a decision of this Tribunal in the matter of Prafull Anubhai Shah vs Securities and Exchange Board of India (Appeal no. 389 of 2021 decided on June 28, 2021).

5. In view of the aforesaid, the impugned order insofar as it relates to the appellants are quashed at the admission itself without calling for a reply."

I humbly state that in view of my aforesaid submissions and the settled position in law, no liability may be fastened on me for the violation of 3 (b), (c), (d) and 4(1), 4(2) (f) and (r) of PFUTP Regulations read with section 12 A (a), (b) and (c) of the SEBI Act and Regulation 57(1) and 60(7)(a) of the ICDR Regulations.

I most humbly submit that I have not committed any act in defiance of any regulations or any provisions of law and that I am not liable to be proceeded against with an inquiry and penalty.

Letter 2:

We refer to your SCN dated 15.12.2017 and our client's replies dated 26.02.2018 and 07.10.2021.

On behalf of our client, we wish to place on record the following citations and request you kindly consider the Adjudication Order with respect to 18 entities in the matter of Acropetal Technologies Ltd.



same as a part of the submissions.

1. Our client places on record that that a common SCN dated 20.10.2016 was issued under Section 11 and 11B of the SEBI Act in the matter of Acropetal Technologies Ltd for the alleged violation of non-payment of dividend declared to the shareholders for the financial year 2011-2012. Our client craves leave to refer to para 4.5.4 on page 11 of the said order detailing his contentions in respect of the SCN dated 20.10.2016. The Ld. WTM vide order dated 04.02.2021 had disposed off the SCN issued to our client without any directions for the reasons stated therein. **(Copy attached vide Annexure 1)**
2. Our client craves leave to rely on the judgment dated 27.09.2021 of the Hon'ble Apex Court in the case of Ravindranatha Bajpe V/s Mangalore Special Economic Zone Ltd. & Others Etc in Criminal Appeal nos.1047-1048/2021 wherein the Hon'ble Apex Court has concluded that without any specific allegation or evidence to show the specific role attributable to the Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner/Supervisor, they cannot be accused or be held vicariously liable for the actions done by the Company. **(Copy attached vide Annexure 2)** We quote from the said order:

“As held by this Court in the case of India Infoline Limited (supra), in the order issuing summons, the learned Magistrate has to record his satisfaction about a prima facie case against the accused who are Managing Director, the Company Secretary and the Directors of the Company and the role played by them in their respective capacities which is sine qua non for initiating criminal proceedings against them.

Looking to the averments and the allegations in the complaint, there are no specific allegations and/or averments with respect to role played by them in their capacity as Chairman, Managing Director, Executive Director, Deputy General Manager and Planner & Executor. Merely because they are Chairman, Managing Director/Executive Director and/or Deputy General Manager and/or Planner/Supervisor of A1 & A6, without any specific role attributed and the role played by them in their capacity, they cannot be arrayed as an accused, more particularly they cannot be held vicariously liable for the offences committed by A1 & A6.”

We state that the burden of proof is much more in criminal jurisprudence whereas the present proceedings are under the Adjudicating Proceedings and as such the Ld. Adjudicating Officer ought to consider the limited extent of discharge of burden of proof in favour of our client. Further, the aforesaid judgment deals with the vicarious liability of Chairman, Managing Director/Executive Director whereas in sharp contrast, it is an admitted fact that in the present proceedings our client is only a Non-Executive Independent Director.

3. Our client craves leave to refer to the order dated 27.09.2019 (at para 182 c, on page 100) of the Ld. WTM in parallel proceedings wherein our client was restrained from accessing the securities market for a period of five years from the date of this order and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of five years, from the date of this order. Further, he is also restrained from being associated with any listed company or a SEBI registered intermediary, in any capacity including as a Director or key managerial person, directly or indirectly, for a period of five years from the date of the order. **(Copy attached vide Annexure 3)**



Our client had preferred appeal to the Hon'ble Securities Appellate Tribunal against the said order. However, the Hon'ble Securities Appellate Tribunal was pleased to dismiss the Appeal No. 91 of 2021 on the ground that no cogent or plausible explanation had been given by our client for condonation of delay in filing the appeal. **(Copy attached vide Annexure 4)**

We state that our client is not liable to be proceeded against with an inquiry and penalty since the doctrine of mitigation squarely applies in the present circumstances as our client is already under restraint since 27.09.2019, i.e more than two years. It may be appreciated that the restraint is continuing and is prohibitive in terms of opportunities in the market and in professional life and the stigma attached is detrimental to social life and imposition of any monetary penalty shall add to the burden to our client.

Our client humbly prays that the Show Cause Notice as against him be withdrawn and he should be discharged from the proceedings.

Noticee no.18:

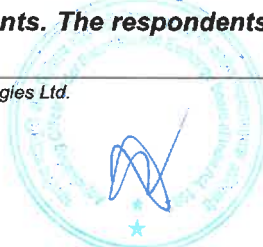
Letter dated November 12, 2021

- That on 13.05.2016 a letter was sent by SEBI to the Respondents enquiring primarily about the transaction made by Acropetal Technologies Ltd. (herein referred to as ATL) in the bank account under the name of Virtus Tech Pvt Ltd. in United Bank of India. Further, general details of the business of Virtus Tech Pvt Ltd along with its relationship with ATL were asked to be presented via reply by 17.05.2016.
- That on 17.05.2016 another reminder letter was sent by SEBI advising to submit a pointwise reply to letter dated 13.05.2016 latest by 19.05.2016.
- That on 19.05.2016 a reply to SEBI was sent by the respondents requesting a period of 6 weeks to furnish the required information and documents thereof.
- That a reply via letter dated 20.05.2016 was sent by SEBI advising to submit the true and complete details with regards to information as sought by them latest by 23.05.2016.
- That on 23.05.2016 a detailed and pointwise reply as sought by SEBI was sent by the respondents. It is submitted that the enquired transaction made via bank account of United Bank of India under the name of Virtus Tech was unknown to Virtus Tech or its directors. Moreover, the respondents were completely unaware of the presence of such an account in the name of Virtus Tech. Subsequently, it came to the knowledge of the respondents that an account in United Bank of India under the name of Virtus Tech and transactions thereof were infact controlled by D Ravikumar and Anilkumar P. As a result of this knowledge, a declaratory suit (OS 1914/2012) in the Hon'ble City Civil Court Judge at Bangalore was filled against D Ravikumar and Anilkumar P.

- That on 26.05.2016 reply to respondents' letter was sent by SEBI expressing their unhappiness and dissatisfaction upon reply dated 23.05.2016. It is pertinent to mention that every query sought by SEBI was addressed truly, completely and in detail. It is further submitted that the respondents had no connection with ATL and were not a part of any transactions with them made through account in United Bank of India. It is further submitted that the respondents were indemnified by Ravikumar and Anilkumar against any claims, damages or liabilities arising out of bank account under the name of Virtus Tech in United Bank of India. Due to this, no complaint or FIR was lodged against Ravikumar and Anilkumar by the respondents.

Brief facts of the case:

- It is submitted that Respondent **Virtus Tech Pvt Ltd.**, is a company incorporated on 16.04.2010 under the Companies Act, 1956 with the object of carrying on business in the IT Computer Hardware, software and IT services. Further submits that all the transactions carried on by Virtus Tech are accounted for in its books of accounts maintained regularly.
- That Sri Rahuldev A. Holla and Mr. Ramesh Shetty respectively are directors of the Respondent Company, who hold 50% shares each of the Respondent Company.
- That prior to incorporation of the company, Sri D. Ravikumar, a person known to the respondent offered to finance and support the new company to be started. In furtherance, an MOU dated 11.12.2009 was entered between the parties, wherein Ravikumar promised to bring in funds for the company so incorporated. However, he failed to provide the promised funds. Despite this, the business of Virtustech was carried on by Sri Rahuldev A. Holla and Mr. Ramesh Shetty, the directors of the company.
- That both Directors of the company, Sri Rahuldev A. Holla and Mr. Ramesh Shetty opened two bank accounts, one in Karnataka Bank, St. Marks Road branch, Bangalore bearing account no. 182000100031501 and the other with State Bank of India, K.R. Road branch, Bangalore bearing account no 31174450916.
- That D. Ravikumar is running a separate company under the name and style of M/S Acropetal Technologies Ltd. An offer of merging Virtustech with Acropetal was made by him to the respondents herein, by way of allotting shares of Acropetal to Virtustech after bringing out Initial Public Offering of the said company. Further, the Directors of the Company, Virtustech were informed about having to sell 80% of the shares held by them in respondent company in favor of Sr. Anilkumar P (nominee of D. Ravikumar). Subsequently, 2 separate purchase agreements for selling 40% shares each dated 17.02.2011 were entered by Directors of the Company with Anilkumar P.
- That D. Ravikumar failed to keep up his promise of merger of Virtustech with Acropetal and consequential allotment of shares to Directors of the Respondent Company of Acropetal.
- That on 07.03.2011, after the share purchase agreement, Anilkumar P fraudulently opened a bank account in United Bank of India, K G Road branch, Bangalore, bearing account number 0499050149457 **in the name of Virtustech without the knowledge of the respondents. The respondents were unaware of the same**



and upon learning of the opening of the account and huge transactions taking place in the said account, Directors confronted Anilkumar P and objected to all the transactions carried out in the name of Virtustech.

- That it was learned by the respondents that all the transactions were carried out and controlled by Anilkumar as per the instructions of D. Ravikumar. Being confronted by both the Directors, Anilkumar agreed to indemnify them for all the transactions carried out in the name of Virtustech by the said account.
- That subsequently, on 31.10.2011, an **Indemnity Deed** was executed by D Ravikumar in favor of both the Directors, indemnifying them against all claims, demands or liabilities that may arise as a result of the transaction carried on through the said bank account. Copy of the indemnity deed is attached herewith marked **DOCUMENT No. 1.**
- **Hence, it is submitted that the respondents have nothing to do with the said bank account and the transactions, and therefore they have not been reflected in the Balance sheet as well.**

Therefore, it is humbly submitted that the respondents ever since the incorporation of the business have abided by the laws in force and have never been involved in any prohibited transactions. It is submitted that the respondents have been wrongfully made liable for the transaction in question. It is pertinent to mention that with regards to the facts of the case and proofs furnished thereof, the concerned parties to be questioned by SEBI ought to be Mr D Ravikumar and Mr. Anilkumar P who have violated and have admitted their misdeeds and executed an indemnity deed as well.

Hence the respondents herein seek necessary orders to be passed against Mr D Ravikumar and Mr. Anilkumar P and treat the investigation as closed and disposed off against the respondents.

Noticee no. 18 in his letter dated January 28, 2022 has *inter-alia* reiterated its reply made vide letter dated November 12, 2021.

22. I note that despite the SCN and hearing notices having been duly served upon the Noticee no.4,5,6,7,11,12,13,14,15,16 and 17, these Noticees have failed to submit their reply to the SCN till the date of this order and Noticee no. 4,5,6,7,11,12,13,14,15,16 and 17 also failed to attend the hearing on scheduled date and time. By not replying to the SCN, they have not refuted the charges alleged against them in the SCN. In this context, I would like to rely upon the observation of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) wherein Hon'ble SAT, *inter alia*, held that - "..... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the showcause notice were admitted by them".



23. The Hon'ble SAT has again in the matter of Sanjay Kumar Tayal & Others v SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), *inter-alia*, held that – “.....As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices.....”.

24. Undersigned undertook several efforts to deliver the hearing notices to Noticees during lockdown in the scenario of ongoing COVID-19 pandemic where Hearing Noticees sent to Noticees through SPAD returned undelivered. In view of the above, I am of the opinion that the SCN and Notices of hearing have been duly served upon all the Noticees except on Vision, Interbrew (SCN was duly served through SPAD) and Corus Ltd. (international Noticees). Noticee no. 4,5,6,7,11,12,13,14,15,16 and 17 failed to reply to the SCN till the date of this Order and also failed to avail the opportunity of personal hearing. Noticee no. 1 and 2 failed to reply with respect to allegations against them as mentioned in the SCN despite several opportunities granted to them. The principle of natural justice has been followed in the matter, as enough opportunities were provided to the Noticees to reply to the SCN and appear for hearing. Therefore, I am inclined to decide the matter with regard to these Noticees taking into account the evidence / material available on record.

25. Before moving forward, it is pertinent to refer to the relevant provisions of the aforesaid alleged violations committed by the Noticees, which reads as under:

SEBI Act, 1992

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;



(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

.....

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.



(2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors

(r) planting false or misleading news which may induce sale or purchase of securities.

Relevant provisions of ICDR Regulations

Manner of disclosures in the offer document.

57. (1) *The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.*

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;

26. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees, I record my findings hereunder. The first issue of consideration is to examine the violation of the PFUTP Regulations by Noticees. Thus, I will first proceed to deal with the allegations relating to utilisation of IPO proceeds by examining the submissions of ATL and then analysing the audit trail of bank accounts:



27. The objects of the issue as per ATL's prospectus dated 25/02/2011 were as follows: -

(Rs. Lakhs)

Sr. No.	Particulars	Amount (as per the prospectus)
A.	Proposed Acquisitions	5500.00
B.	Setting up of Software Development Centre and Corporate Office	2618.67
C.	Expansion & Establishment of overseas offices	1944.96
D.	Part Repayment of Term Loans	2500.00
E.	Additional Working Capital requirements	2500.00
F.	Public Issue Expenses	1500.00
G.	General Corporate Purposes	436.37
TOTAL		17,000.00

28. It is noted from the IR that an amount of Rs. 165.67 crore (net of BRLM fee) was credited to ATL's bank accounts as tabulated below:

Date (of credit)	Bank Name	Bank Branch	A/c Number	Amount (in Rs.)	Bank wise (Amount Rs.)
09/03/2011	Axis	MG Road Bangalore	009010300011097	59,32,49,850	59,47,98,840
15,48,990					
09/03/2011	ICICI	Andheri (W), Mumbai	101205000264	43,36,58,430	43,36,58,430
10/03/2011	UBI	Bangalore Cantonment	0884050108584	41,34,29,400	41,34,29,400
10/03/2011	SBT	Industrial Finance Branch, Bangalore	67042921027	14,36,34,240	21,48,37,977
11/03/2011			7,12,03,737		
Total		165,67,24,657		165,67,24,657	

29. During the course of investigation, ATL was advised to provide complete details on the utilisation of the IPO proceeds. ATL, vide its letter dated 11/06/2012 *inter-alia* submitted that an amount of Rs.51.96 crore was utilized towards proposed acquisitions as on 31/03/2012. However, ATL did not provide any supporting documental was further advised



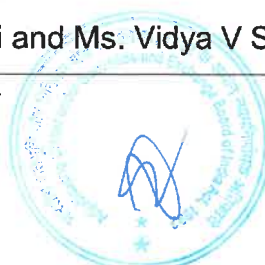
to furnish supporting documents with regards to such acquisitions. ATL, vide letter dated 17/07/2012, *inter-alia* submitted copies of Board agenda and share purchase agreements with regard to acquisition of companies etc. However, specific details like payment made w.r.t. acquisition, name of sellers etc., were not provided. Hence, vide summons dated 06/02/2013, ATL was advised to provide complete details with regard to the claimed acquisitions, *inter alia* including specific date(s) of acquisitions, number of shares purchased, name of sellers etc. Thus, ATL, vide its letter dated February 14, 2013 *inter alia* submitted following details:

Name of Acquired Company	Amount (Approx Rs.	No. of shares acquired (%)	Remarks
Kinfotech Pvt Ltd	5.10	510444 (51%)	Domestic
Mindriver Information technologies P Ltd	9.50	439960(100%)	Domestic Acquisition
Line Beyond Inc	22.29	448415.56 (100%)	Overseas
Optech Consulting Inc*	26.78	1000 (100%*)	Overseas
Total	63.67	-	-

*70% from Corus Ltd and 30% from Vision Info Inc.

30. The above acquisitions have been analysed as under:

30.1. With respect to the acquisition of Kinfotech, it is noted from the bank statement submitted by ATL, that during the period from May 03, 2011 to May 07, 2011, ATL had paid Rs. 3.10 crore to Shri Prabhakar Kini and Rs. 50.22 lakh each to Shri Satish Kini and Ms. Vidya V Shanbhag. It is noted from the submissions of ATL that 2 share purchase agreements dated April 29, 2011 (executed between ATL and Shri Prabhakar Kini, Shri Satish Kini and Ms. Vidya V Shanbhag) and May 24, 2011 (executed between ATL and Shri Prabhakar Kini) were executed for transfer of shares. ATL has also submitted copy of share transfer forms reflecting the said transfer. It is also noted from the Annual Return of Kinfotech filed subsequent to the AGM dated September 23, 2011 as available at MCA website that the same reflects in the section "transfer register" in the said Annual Return of Kinfotech in which transfer of 5,10,444 shares to ATL has been recorded on August 2, 2011. However, though ATL has submitted bank statements reflecting transfer of Rs. 4,10,44,400/- to Shri Prabhakar Kini, Shri Satish Kini and Ms. Vidya V Shanbhag as per the



agreement dated April 29, 2011, no Bank transaction statements has been submitted by ATL reflecting the transfer of Rs. 1 crore to Mr. M. Prabhakar Kini subsequent to money transfers made to him on May 4, 5 and 7, 2011.

30.2. In view of the above, in respect of finding as to whether said Rs. 1 crore was paid for acquisition of shares Kinfotech, no firm finding that Rs. 1 crore was paid for acquisition of shares of Kinfotech can be given as conclusive proof of transfer of Rs. 1 crore is not available. However, in light of the evidence available for the acquisition of 5,10,444 shares of Kinfotech by ATL, a benefit of doubt can be given to ATL in respect of the allegation of diversion IPO proceeds of said amount of Rs.1 crore.

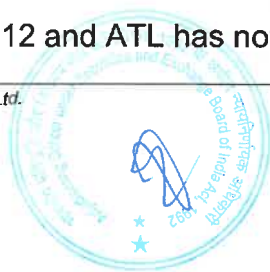
30.3. With respect to the acquisition of Mindriver, it is noted from the IR that as per bank statements of ATL that it had paid approximately Rs. 9.42 crore to the eight shareholders of Mindriver. Further, ATL has submitted the bank statement of United Bank of India during the extant proceedings for the period April 1, 2011 to July 4, 2011. It is noted on a perusal of the same and the confirmations received from majority shareholders of Mindriver and signatories of the aforementioned share purchase agreement that, the payments made to the shareholders of the Mindriver and Mr. Sanjay Prasad, then CEO of Mindriver and signatory to the share purchase agreement dated 25/04/2011 (on behalf of Mindriver), totals Rs. 9,42,27,442/-. As, company itself has not shown the respective bank debits of Rs. 9.50 crore with their dates to substantiate its claim. Therefore, it is concluded that ATL utilised approximately Rs. 9.42 crore to acquire the shareholding of Mindriver.

30.4. ATL has also submitted extract of minutes of Board Meeting held on May 27, 2011 showing that the Board has authorised Mr. Ravikumar for acquisitions of 51% equity in Kinfotech for an amount of Rs. 510.44 lakh and for acquisitions of 100% stake in Mindriver for Rs. 9.5 crore. It is noted the authorization by the Board of the Company does not ipso facto mean that the amount claimed by ATL to be spent in acquiring the said 2 companies was actually spent in the acquisition. The reason among other things which have been discussed in preceding paragraph, is lack of banking transaction reflecting the transfer of acquisition amount to the concerned parties. Thus, the submission of the Board Minutes does not carry enough weightage.



30.5. With respect to the acquisition of Optech Consulting Inc., it is noted from the copies of share purchase agreement dated 21/03/2011 with Corus Ltd submitted by ATL that ,ATL had entered into an agreement dated March 21, 2011 with Corus Ltd. to acquire 70% of the share capital of Optech Consulting Inc. Vision Info Inc., a wholly owned subsidiary of ATL entered into an agreement dated February 1, 2012 with Corus Ltd. to acquire 30% of the share capital of Optech Consulting Inc. One of the corresponding bank entries shown by the company for the acquisition of Optech Consulting Inc. is dated February 17, 2011. It is noted that the same is before the IPO proceeds were credited to the bank account of ATL which was during the period March 9-11, 2011. Furthermore, the agreement dated March 21, 2011 does not acknowledge that any payment was received by Corus Ltd. prior to entering into that agreement for the sale of shares of Optech Consulting Inc. With respect to other transfers of money made for the acquisition of Optech Consulting Inc. on May, 18, 22, June 1, 11 and July 23 of 2012, it is noted that both the aforesaid agreements had a "Closing Date" (March 31, 2011 and March 31, 2012) to fulfill their obligations under the agreement. The agreements also had a clause that stated that the "Closing Date" may be postponed to a later date by mutual agreement of the parties. In the instant matter, with respect to the agreement dated March 21, 2011, it is noted that subsequent to the agreement and before the "Closing Date" no transfers took place before March 31, 2011. ATL has also not submitted any material / evidence to show that the "Closing Date" with respect to the agreement dated March 21, 2011 was postponed by mutual agreement of the parties. Moreover, the subsequent payments made in the months of May, June and July, 2012 have been made to Vision Info Inc. for the acquisition of Optech Consulting Inc. No rationale / reason was submitted by ATL for making the said payments to its subsidiary when the agreement to acquire was made with Corus Ltd. Also, documentary evidence for onward transfer of money from Vision Info Inc. to Corus Ltd., has also not been submitted by ATL.

30.6. With respect to the second agreement dated February 1, 2012, it is noted that ATL has not provided any rational for entering into an agreement through its wholly owned subsidiary, Vision with Corus Ltd. to acquire 30% of the share capital of Optech Consulting Inc. when it has previously entered into an agreement to acquire 70% of the share capital of Optech Consulting Inc. with Corus Ltd. Further, as per the aforesaid agreement, the "Closing Date" of the agreement was March 31, 2012 and ATL has not submitted any bank



statements of its wholly own subsidiary demonstrating that Vision had transferred the entire consideration of US\$ 21,00,000/- to Corus Ltd. before March 31, 2012. Further, the agreement dated May 2, 2012 entered between Vision and ATL for acquisition of 300 shares of Optech Consulting Inc. within a month of the "Closing Date" of agreement dated February 1, 2012 i.e. March 31, 2012, sans any explanation and in the absence of any correspondence / lack of paper trail between the companies (Vision and ATL) pertaining to the acquisition of 300 shares by ATL from Vision, raises doubt with respect to the agreement dated May 2, 2012 and the purpose for which the money was transferred to Vision.

30.7. For the acquisition of Line Beyond Inc., the corresponding bank entries shown by the company are dated February 23, 2011(approx. Rs.15.06) and March 15, 2011(approx. Rs.15.06). The first bank transfer is before the IPO proceeds was credited and the second bank transfer is before the share purchase agreement (dated March 23, 2011) was entered into between the parties. In my opinion, if the acquisition is happening at arm's length, then there is no plausible reason to transfer the money to the seller even before the agreement to sell has been finalised. At least in the given situation, the said reason has not been provided by ATL.

30.8. It is also noted that no correspondence other than the bank transfer between Corus Ltd. and ATL has been submitted by ATL with respect to the acquisition of the companies. Also, the company has not submitted any due diligence report or research report which enabled the Board of the company to arrive at the decision to buy the said companies and not any other company.

30.9. Further, it is noted from the share purchase agreement entered into by the company with Corus Ltd. that the same has been signed by Shri Vijay Kumar Sampath on behalf of Corus Ltd. During the course of investigation, it was noted that Shri Vijay Kumar Sampath was informed by his business partner Shri Mohan H. Ramakrishna, Independent Director of ATL that Shri Ravikumar is looking for some person to be Director for certain companies –viz. Corus Ltd. and Interbrew, both based at UAE. That is how he became a Director in the said companies. Shri Vijay Kumar Sampath has stated that he had signed all the papers under the instructions of Shri Ravikumar. Shri Vijay Kumar Sampath had also submitted a copy of an email dated March 18, 2010 at the time of investigation, which was sent by Shri

Prashanth Kumar from domain prashanth@acropetal.com (an employee of ATL) to Shri Mohan H. Ramakrishna who in turn forwarded the same to him (Shri Vijay Kumar Sampath). The message contained an attachment which was Power of Attorney. The email message (addressed to Shri Mohan H. Ramakrishna) specified that the attached Power of Attorney was to be signed by Shri Vijay Kumar Sampath and send back to him (Shri Prashanth Kumar). It was observed that the Power of Attorney was relating to authorizing one Shri Anil Babu Mampally to do the needful to register Corus Ltd. Shri Vijay Kumar Sampath signed and sent the Power of Attorney to Shri Prashanth Kumar on the same day.

30.10. Shri Mohan H. Ramakrishna also confirmed that he had introduced his partner Shri Vijay Kumar Sampath to Shri Ravikumar. He has also submitted copy of an email received from Shri Prashanth Kumar with an attachment of 'Remittance Application form' of Standard Chartered Bank and instructing him to make 25 copies of said form and obtain Shri Vijay Kumar Sampath's signature.

30.11. Though Shri Ravikumar at the time of investigation has denied knowing Shri Vijay Kumar Sampath but there is contrary evidence available (statements by Shri Vijay Kumar Sampath and Shri Mohan H. Ramakrishna and emails from employee of ATL) which shows that Shri Ravikumar / ATL knew Shri Vijay Kumar Sampath from beforehand. Therefore, it can be further held that Corus Ltd. was operated / managed by Shri Ravikumar through Shri Vijay Kumar Sampath. Moreover, the company has not produced any documentary evidence to show incorporation documents of Corus Ltd / Line Beyond Inc/ Optech Consulting Inc., Annual Report / Balance Sheet pre and post-acquisition of the acquired companies, any third party transactions entered into by the acquired companies pre and post-acquisition or any other documents to show that the acquired companies / Corus Ltd. are a going concern. ATL also failed to provide any details with regard to any filings with U.S. authorities or other such document to evidence that the acquisition of Line Beyond and Optech Consulting was from the IPO proceeds.

30.12. In view of the above and the fact that, Corus and Interbrew Networks were operated / managed by Shri Ravikumar (CMD of ATL) himself, it can be held that the acquisitions of Line Beyond Inc. and Optech Consulting Inc. was not genuine. It can therefore be held that



ATL did not spend any amount from IPO proceeds to make any genuine acquisitions (Line Beyond Inc. and Optech Consulting Inc.) as claimed by it.

30.13. From the findings arrived at preceding paragraphs, I conclude that out of Rs. 55 crore earmarked for the object of "Proposed Acquisitions" as mentioned in the Prospectus, ATL has utilised only Rs. 13.52 crore (Rs. 4.1 crore for Kinfotech and Rs. 9.42 crore for Mindriver) towards the stated object.

Setting up of Software Development Centre and Corporate Office

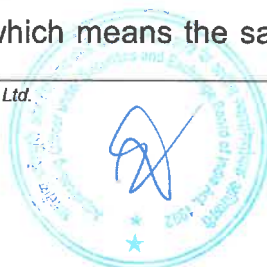
31. With respect to the the object of "Setting up of Software Development Centre and Corporate Office" as mentioned in the Prospectus. ATL, vide its letter dated 11/06/2012 inter-alia submitted that it had utilized Rs.5.74 crore towards the said object. However, it was observed that same was in variance with quarterly filing (with the exchanges) as on 30/06/2011 w.r.t utilization of IPO and Annual Report for the year 2010 -11. ATL has submitted that when the IPO was conceived, it was expected that the company would provide outsourced services, which required the setting up of a software development centre and a corporate office. However, changes in the services outsourcing market necessitated immediate changes to the business strategy and it was decided to invest in technology, rather than on setting up of a software development centre and corporate office. This necessitated a change in the final utilisation of the IPO proceeds. In this regard, it is noted that company has not submitted any study / report or any data showing the changes in the services outsourcing market, pre and post IPO. ATL had filed its Prospectus with RoC on February 25, 2011 and the IPO proceeds were credited to its account between March 9-11, 2011. No explanation has been furnished by ATL to show how the attending circumstances changed within such a short span of time that necessitated reconsideration of its decision to set up Software Development Centre. ATL has also not submitted any Board resolution approving such a decision. The company vide its letter dated 17/07/2012 has just made a bald submission without any supporting evidence that the amount of Rs. 5.74 crore was spend on account of hardware, software and related activities. Further, no supporting documents viz. bank statements, invoices, software purchase agreement etc. have been submitted by ATL showing the utilisation of Rs. 5.74 crore for hardware, software and related expenditure.



32. In view of above, I conclude that out of Rs. 26.18 crore earmarked for the object of "Setting up of Software Development Centre and Corporate Office" as mentioned in the Prospectus, ATL had not utilised any amount towards the stated object.

Expansion & Establishment of overseas offices

33. In this regard, I note that Noticee has submitted different versions of utilisation of the IPO proceeds towards the stated object. In one version, ATL vide its dated 11/06/2012 has submitted that in terms of the revised utilisation of the IPO proceeds an amount of Rs. 19.29 crore has been utilised towards the stated object and vide letter dated 17/07/2012, ATL has submitted a turnkey service agreement dated March 12, 2011 entered between Vision Info Inc (UAE based subsidiary of ATL) (Vision) and Interbrew Networks Ltd, UAE (Interbrew) for providing consultancy services for opening offices abroad and details of expenditure (Rs.19.29 crore) incurred in 8 locations (at Dallas, Boston, Chicago, San Francisco, Tampa, Dubai, Germany & Singapore). No rationale has been provided by the company to enter into an agreement indirectly with a third party through its wholly owned subsidiary. Moreover, apart from showing (as per one version) that money was transferred to Vision and subsequently to Interbrew for office spaces, ATL has not submitted any supporting documents to show the existence of such offices viz., tentative location/area of offices, sale /lease agreement for the said properties, relevant taxes / property taxes / utility bills paid to the concerned authorities etc. Furthermore, no correspondence between Interbrew and ATL / Vision post and prior to the said Turnkey Agreement has been submitted by ATL. On a perusal of the terms of Turnkey Agreement shows that regular invoices would be raised by Interbrew. However, as per the material available on record, there is absence of any correspondence between Interbrew and ATL / Vision regarding payment schedule or the acknowledgment of payment and there is also absence of correspondence with respect to the same between ATL and Vision. No invoices raised by Interbrew has been submitted by ATL. Rather, contrary to the terms of the Turnkey Agreement, i.e., regular invoices will be raised, a lump sum amount of Rs. 22.63 crore approx (equivalent to US\$ 50 lakhs) was transferred to Vision by ATL on March 10, 2011. Further, it is noted that out of 7 offices, money was transferred in full by Vision to Interbrew for 6 offices almost one year prior to them being opened, while the agreement requires invoices which means the same can be paid only



after the work is completed either in part or in full. In any case there is no evidence to substantiate the fact of opening of the offices. The aforesaid circumstances leads to the conclusion that on a preponderance of probability, the transaction of US\$ 50 lakh between ATL / Vision and Interbrew for office spaces is not genuine.

34. With regards to the aforementioned transfer of funds (Rs. 22.63 crore from ATL to Vision), ATL submitted different versions of replies. In another version, company vide its letter dated 17/07/2012 submitted that the said transfer to Vision was *"This is not the project advance returned. Our Wholly Owned Subsidiary (WOS) Vision Info Inc has requested funds for meeting their increased working capital requirements."* This clearly goes to contradict the version of the company that money was used for Expansion & Establishment of overseas offices. ATL has submitted certified copy of the resolution passed by its Board of Directors at its Board meeting held on March 06, 2011 regarding providing loan of amount not exceeding US \$50,00,000 to its wholly owned subsidiary, Vision. However, no documentary evidence showing that how and when such a request was received by ATL. Subsequently, on April 18, 2013, Shri Ravikumar stated the following *"It's (payment to vision) not related to IPO objectives, the payment has gone from IPO proceeds since the company has utilized the same extent of money for the objective of IPO prior to receipt of IPO proceeds"* However, no supporting document has been submitted even towards the same. Finally, the company stated that it decided to provide interest free loan of Rs. 22.63 crore to Vision as Vision had requested the same for its increased long term working capital requirement. Subsequently, as per the company, when Vision was ready to repay the loan amount, Vision was requested to pay the same to Interbrew towards setting of offices abroad.

35. It is observed from the above that apart from submitting different versions for the transfer of funds to Vision, the company has not substantiated its versions with documentary evidence. Further, from the bank account statement of Vision, it is observed that the amount of US\$ 50 lakh was transferred by it to Interbrew immediately on next day of receipt of funds i.e., on March 13, 2011. The immediate transfer of funds to Interbrew by Vision does not explain as to how funds transferred by ATL as loan to its subsidiary for 'long term working capital' could be transferred to another entity entirely next day itself. Furthermore, as mentioned in the preceding paragraphs that Shri Vijay Kumar Sampath was made director of Interbrew



by Shri Ravikumar and thus was acting under the instructions of Shri Ravikumar. Therefore, it can be held that Interbrew was managed /operated by Shri Ravikumar.

36. In view of the above contradictory stands taken by the company and in absence of relevant and specific details to evidence that Rs. 22.63 crore transferred to Vision Info was utilized for "Expansion & Establishment of Overseas offices", it is difficult to believe the amount paid to Interbrew was towards the "Expansion & Establishment of Overseas offices". Therefore, it is concluded that out of Rs. 19.45 crore earmarked for the object of "Expansion & Establishment of Overseas offices" as mentioned in the Prospectus, no amount was utilised by ATL towards the stated object.

Part Repayment of Term Loans

37. With respect to part payment of Rs.25 crore term loan, ATL vide letter dated 11/06/2012 submitted that an amount of Rs.19.35 crore has been utilised for the same. However, no specific details were submitted. Further, ATL vide its letter dated 14/02/2013 submitted that Rs.25 crore of the IPO proceeds were utilised towards the part repayment of term loan. However, from the analysis of copies of bank account statements submitted by ATL, it was noted that an amount of Rs.1.67 crore was used from IPO proceeds towards payment of instalment for term loans (Rs.1.01 crore from SBT A/c Number 67042921027 on 11/03/2011 towards closure of term loan bearing loan a/c Number 67043345427 with SBT and Rs.65 lakhs from Axis Bank a/c 9010300011097 on 09/03/2011 towards instalments of 2 term loans). The remaining amount was paid by ATL in monthly instalments during the period March 2011 to October 2012 and was not paid from IPO proceeds as IR observes that the entire proceeds of IPO were utilised / transferred to various entities within a period of 10 days (i.e. from 09/03/2011 to 18/03/2011). Thus, it is concluded that out of Rs. 25 crore earmarked for the object of "Part Repayment of Term Loans" as mentioned in the prospectus, ATL utilised Rs. 1.67 crore towards the stated object.

Additional Working Capital requirements

38. With respect to Rs. 25 crore earmarked for the object of "Additional Working Capital requirements" as mentioned in the prospectus, ATL, vide letter dated 11/06/2012 submitted that as on 31/03/2012, an amount of Rs.58.26 crore were utilized towards stated object.



However, specific details were not provided. ATL vide letter dated 17/07/2012 submitted only reason for increase in working capital and did not provide any details / documentary evidence for usage of aforementioned amount towards working capital. ATL vide its letter dated 30/04/2013 changed its submissions and submitted that Rs.40.90 crore was utilized towards working capital and submitted the following details:

S. No	Particulars	Amount (in Rs. crore)
1	For Salaries and related work	30.50
2	Business promotion and marketing exp	0.96
3	For UID and other projects	3.26
4	For onsite development expense	6.19
	Total	40.90

39. However, ATL did not provide any supporting document with regard to its above claim. In this regard, it is noted from the IR that on analysing the bank statements, it was observed that based on the description "Salary", Rs. 87 lakh was utilised towards the payment of salary. Further, it is noted from the submission of the company in the extant proceedings, that though the company has submitted the details of utilisation, it is not supported by any documentary evidence. For e.g., ATL has submitted that it has paid Rs. 30.50 crore towards salary between the period March, 2011 to August 14, 2012. However, the company has neither submitted a list / number of its employees or sample salary slips of its employees or the corresponding monthly debits from its bank account. The company has also submitted that for onsite development expense, a sum of Rs. 6.19 crore was spent by it. The company has not submitted a list of its clients or the period when, where and how many of its employees were working onsite or any correspondence with its clients regarding its employees working onsite.

40. In view of the above and considering documentary evidence is only available for the payment of Rs. 87 lakh, I conclude that only Rs. 87 lakh out of Rs. 25 crore allocated for the aforesaid objective was utilised from the IPO proceeds.

Public Issue Expenses



41. With respect to Rs. 15 crore earmarked for the object of "Public Issue Expenses" as mentioned in the prospectus, ATL vide its letter dated 11/06/2012 at the time of investigation has submitted that Rs. 11.12 crore has been utilised for the said objective and has submitted the invoices for an amount of Rs. 5.86 crore. I note that, ATL vide letter dated 17/07/2016 at the time of investigation additionally submitted a debit note issued by Vision Info Inc (an overseas subsidiary of ATL) for an amount of US\$.5.5 lakhs, without specifying the details of expenditure involved. As Vision Info is wholly owned subsidiary of ATL itself, the debit note issued by it was not considered as valid evidence towards the expenditure incurred for Public Issue Expenses. Considering that the company has submitted invoices for the amount of approximately Rs. 6 crores, there is no reason for the company not to submit invoices for the remaining amount. In the absence of the invoices, the company could have submitted a copy of the agreement with its vendors or corresponding bank debits or any correspondence with its vendors reflecting their commercial relationship / consideration paid. Thus, in view of the aforesaid, I conclude that out of Rs. 15 crore earmarked for the aforesaid object, ATL has utilised Rs. 5.86 crore for the same.

General Corporate Purposes

42. With respect to Rs. 4.36 crore from IPO proceeds earmarked for General Corporate Purpose. ATL vide its letter dated 11/06/2012 at the time of investigation has submitted that a sum of Rs. 4.29 crore was used towards General Corporate Purposes and has given the following break-up details for the same:

Particulars	Amount
Foreign Travel/domestic travelling exp	Rs 1.18 Cr
Maintenance and upgradation of PCs	Rs 0.75 Cr
Business promotion	Rs 0.64 Cr
Printing and Stationery	Rs 0.53 Cr
Others	Rs 1.17 Cr

43. ATL also submitted copies of certain invoices towards purchase of PCs and equipment rental agreements with regard to above. However, documents submitted by it were incomplete & vague and ATL was also advised to provide complete details with necessary invoices/other supporting documents. In this regard, it is noted that the company has not submitted corresponding bank statements or any correspondence / agreements with its



counter parties to substantiate its claim. For instance, the company has stated that it has spent Rs. 1.19 crore on foreign / domestic travel. In order to support its submission, the company could have submitted copy of tickets or communication from the airline company / travel agent or the payment made to them, but the company has failed to submit the same. Similarly, for maintenance and up gradation of computers, the company has submitted that it has spent Rs. 75 lakh but the company has not supported its claim by a copy of the service agreement and correspondence with its service provider or bank statement showing payments made to the service provider. As ATL has not provided any evidence to substantiate its claim that it had spent Rs. 4.36 crore from IPO proceeds for General Corporate Purpose Thus, in view of the aforesaid, it is held that the company has not utilised any amount towards the stated object of General Corporate Purpose.

44. Thus, in view of the aforesaid, a table on the actual utilization of IPO proceeds by ATL vis-a-vis the proposed utilization as mentioned in the prospectus is as under: -

In Rs. crore

S. No.	Particulars	Amount utilized as per ATL		As per Investigation
		As per Prospectus	As per ATL letter dated 11/06/2012 (as on 31/03/2012)	Amount utilized by ATL for IPO objects
1	Proposed Acquisitions	55.00	51.96	13.52
2	Setting up of Software development center & Corporate Office	26.19	5.74	-
3	Expansion and establishment of offices overseas	19.45	19.29	-
4	Part repayment of term loan	25.00	19.35	1.67
5	Additional working capital	25.00	58.26	0.87
6	Public Issue expenses	15.00	11.12	5.86
7	General Corporate Expenses	4.36	4.29	-
	TOTAL	170.00	170.01	21.92

45. From the above table, it is observed that out of Rs. 170 crore of IPO proceeds, the company had utilized only Rs. 21.92 crore towards the objects of the issue. Hence, it is concluded



that ATL had deviated from the objects of the issue and not utilized the IPO proceeds as per the objects as stated in the prospectus.

46. Based on observations made at pre paras, it has been concluded that ATL had not utilized the funds raised through IPO as per the objects set out in the Prospectus and diverted Rs.148.08 crore out of total IPO proceeds of Rs. 170 crores. Thus, the analysis of utilization of money raised in IPO was carried out during Investigation by observing the money trail from ATL's bank account to the bank accounts of various other entities. it is noted that diversion of funds took place between March 9, 2011 to March 18 , 2011 i.e. within a span of ten days via following 11 conduits / methods who have acted hand-in glove with ATL and were party to the actions and deeds of ATL to divert the IPO money and not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

Sl. No.	Particulars	Date
1	Maars Software International Ltd.	9/3/2011
2	Viraj Mercantile Pvt. Ltd.	9/3/2011
3	Vision	10/3/2011
4	Interbrew	11 & 14/3/2011
5	Datamatics Solutions Inc.	14, 15 & 17/3/2011
6	HDK International Pvt. Ltd.	10/3/2011
7	SK Universal Pvt. Ltd.	10/3/2011
8	Corus Ltd.	15/3/2011
9	2 Fixed Deposits	10/3/2011
10	1 Fixed Deposit	11/3/2011
11	Bridge Loan	10/3/2011

47. The said analysis is shown hereunder:

47.1. Maars Software International Ltd. - Rs. 40 crore

47.1.1. The company during investigation has stated that amount of Rs.40.00 crore transferred to Maars Software International Limited (hereinafter referred to as "Maars") was towards 'Project Advance Paid' for development of two software projects and submitted copy of the agreement dated 09/03/2011 in this regard. However, the company has neither submitted any correspondence with Maars prior or post transfer of money nor has submitted any minutes of Board meeting where it was decided to outsource product development to Maars. At the time of statement recording of Shri Ravikumar, he had stated that he is not aware of the technical capabilities or competency of Maars to execute so called ERP related project. It is surprising to note that though the CMD of the company was unaware of the competence of Maars, still

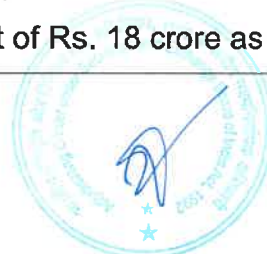


the company transferred a substantial amount of Rs. 40 crore to it. Further, Shri Ravikumar had also stated that till the time of statement recording i.e. January 21, 2016, nothing was done by Maars for which 40 crore advance was paid. It is also noted from the IR that as per the financial statement of Maars for the financial year 2010-11 that it did not have any income from operations and its employee cost was only Rs. 4,000/-. Moreover, name of Maars was appearing in the list of companies under liquidation as on July 21, 2008 as per MCA website. Based on the aforesaid, it can be held on a preponderance of probability that the transfer of Rs. 40 crore to Maars was not for execution of any project and the same was not genuine in nature.

47.1.2. It is noted from IR that, from the bank account statements of Maars and other entities it was found out that out of Rs. 40 crore, Rs. 15 crore was transferred by Maars to five entities, routed through various entities. Further, an amount of Rs. 18 crore was transferred back from Maars to ATL during April, 2011 which in turn was transferred by ATL to various entities as shown below:

Details	Amount in Rs. crore
Transferred to Interbrew Networks (In US (\$))	3.44
Transferred to Datamatics Software (In US \$)	4.07
Transferred abroad in ATL's A/c (in US \$)	1.75
Salary to employees	0.87
Shareholders of Mindriver / Kinfotech	1
Transferred to group/associate entities	6.19
Others	0.68
Total	18.00

47.1.3. From the above table, it was observed that money was transferred from ATL's account to various entities including Interbrew, Datamatics Software, ATL's group entities, which was not in accordance with the objects set out in Prospectus. However, an amount of Rs. 1.87 crore (Salary to employees & shareholders of Mindriver / Kinfotech) can be related to Working Capital Requirements and Proposed Acquisitions as set out in the objects of the issue. Hence, out of Rs. 18 crore as mentioned in table



above, an amount of Rs. 1.87 crore is concluded to be used by ATL for the stated objects of the issue. The remaining Rs. 38.13 crore were not used as per the objects of the issue.

47.1.4. In view of the aforesaid. I conclude that, the transfer of Rs. 40 crore to Maars was not for execution of any project and the same was not genuine in nature. The preponderance of the probability indicates that Maars was hand in glove with ATL and was a party to the actions and deeds of ATL to divert the IPO money and not deploy the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

47.2. **Viraj Mercantile Pvt. Ltd. – Rs. 5 crore**

47.2.1. During the course of investigation, It is noted from the Axis bank A/c Number 910020030165850 of Viraj Mercantile Pvt. Ltd. that Rs. 5 crore was credited from ATL on March 09, 2011 which is immediately on the receipt of IPO proceeds by ATL. ATL had submitted that said amount transferred was towards 'ICD paid'. Further, the company has neither submitted any correspondence with Viraj Mercantile Pvt. Ltd., prior to or post transfer of the said money nor any minutes of the Board meeting where approval for the project was sought. Subsequently, ATL claimed that consequent to a MOU for the development of software project, an amount of Rs. 5 crore was received on February 14, 2011 as Project Advance from Viraj Mercantile Pvt. Ltd., and the amount of Rs. 5 crore transferred to Viraj Mercantile Pvt Ltd., on March 09, 2011 was not an ICD payment but refund of project advance returned to the party, since the project could not take off. In this regard, it is noted that apart from ATL taking conflicting stands regarding reason for the payment to Viraj Mercantile Pvt. Ltd., the MoU submitted by Viraj Mercantile Pvt. Ltd. suffers from the following infirmities:

- i. It is not on stamp paper.
- ii. It does not indicate the place.
- iii. The MoU did not bear any witnesses.

47.2.2. The document submitted by ATL as MOU is actually copied from the MOU between the Department of Agriculture and Cooperation, Ministry of Agriculture, Government of India and National Informatics Centre, Ministry of Information Technology, Government of India in which simply the entity names appear to have been substituted by ATL viz., National



Informatics Centre with ATL and Department of Agriculture and Cooperation with Viraj Mercantile Pvt. Ltd. However, ATL seems to have missed to substitute National Informatics Centre with ATL under point 1 of paragraph A. It is further strengthened from the fact that even certain words which were indicated in BOLD and UNDERLINE have been retained (as it is) in the document submitted by ATL. Besides, even other aspects like the group size {point 4(i), paragraph A of ATL document), nomenclature for committee (PMC), designation (Sr. Technical Director), frequency of meeting (at least once in two months) and other such terms like Viraj Mercantile Pvt. Ltd. offices and field units, Viraj Mercantile Pvt. Ltd. Divisions, the payment heads (point. 4 of paragraph B of ATL document), duration etc., are exactly the same as in the MOU between DAC and NIC. All this leads to conclusion that ATL attempted to submit certain document as an afterthought after having copied it from the internet.

47.2.3. Without prejudice to the above, even if the submissions made by ATL are believed to be true that ATL had received project advance from Viraj Mercantile Pvt. Ltd., ATL should have disclosed the amount of project advance received in the Prospectus. The fact that the said amount of Rs. 5 crore received from Viraj Mercantile Pvt. Ltd. was not disclosed in the prospectus, itself shows that it is an afterthought on the part of ATL so as to portray the transfer of funds from IPO proceeds to Viraj Mercantile Pvt. Ltd. as genuine.

47.2.4. It is noted from the IR that Shri Ravikumar at the time of statement recording on January 21, 2016 had admitted that payment to Viraj Mercantile Pvt. Ltd. was not as per the objects of the issue as disclosed in the Prospectus relating to IPO of ATL. Further, the IR observes that the IPO funds that was transferred to Viraj Mercantile Pvt. Ltd. was immediately diverted by Viraj Mercantile Pvt. Ltd. to Dirva Trade Impex Pvt. Ltd. who had traded in the scrip of ATL after listing. The amount of Rs. 5 crore that ATL had received from Viraj Mercantile Pvt. Ltd. on February 14, 2011 were immediately transferred by ATL to its related entity i.e. Corus Ltd.

47.2.5. In view of the above, I conclude that Rs. 5 crore was diverted by ATL and were not deployed for the stated objects of issue as disclosed in the Prospectus of ATL and Viraj Mercantile Pvt. Ltd. was hand in glove with ATL and was a party to the actions and



deeds of ATL to divert the IPO money and to not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

47.3. Vision Info Inc.

47.3.1. An amount of Rs. 22.63 crore was transferred by ATL to Vision, its wholly owned subsidiary on March 10, 2011 which is immediately on the receipt of IPO proceeds by ATL. Vision in turn transferred the said funds to Interbrew, which is also indirectly controlled by Shri Ravikumar, Promoter & CMD of ATL. It has already been held in preceding paragraphs that the IPO proceeds that were transferred to Vision were not for the stated objective of the IPO (Expansion and Establishment of overseas offices). In view of the same, I conclude that, Vision was hand in glove with ATL and was a party to the actions and deeds of ATL to divert the IPO money and to not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

47.4. Interbrew Networks Ltd.

47.4.1. As mentioned in preceding paragraphs that Interbrew is an entity managed and controlled by ATL. Further, it has also been held that the money that was transferred for setting up offices abroad was also not for the purpose of IPO objects. Hence, it is concluded that Rs. 2.73 crore which were transferred to Interbrew on March 11, 2011 and March 14, 2011 were not related to the objects of the issue. ATL had rather diverted the IPO money to the tune of Rs. 2.73 crore to its own related entity i.e. Interbrew. In view of the aforesaid, I conclude that Interbrew was hand in glove with ATL and was a party to the actions and deeds of ATL to divert the IPO money and to not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

47.5. Datamatics Solutions Inc. - Rs. 7.62 crore

47.5.1. During the course of the investigation, ATL was asked to furnish complete details about Datamatics Solutions Inc. including details of Promoters / Directors, contact address and phone numbers of Datamatics Solutions Inc. alongwith the current status of transaction. ATL submitted that Datamatics Solutions Inc. was ATL's onsite projects vendor and that it was not having any details of Promoters/Directors/key management personnel/contact details of Datamatics Solutions Inc. further, ATL failed to furnish any



correspondence with Datamatics Solutions Inc. or any Board resolution authorising the transfer of money to Datamatics Solutions Inc. It is surprising to note that a substantial amount of money was transferred, however, ATL is not aware about the management of the company or the transaction status or is unable to produce any correspondence with Datamatics Solutions Inc. In view of the same, I conclude that ATL has diverted Rs. 7.62 crore to Datamatics Solutions on March 14, 2011, March 15, 2011 and March 17, 2011 and the same was not related to the objects of issue.

47.6. HDK International Pvt. Ltd. and SK Universal Pvt. Ltd.

47.6.1. It is observed from the bank account of the ATL (A/c Number 9010300011097, Axis Bank Ltd.) that there were transfer of Rs. 14.5 crore to HDK and Rs. 10.5 crore to SK on March 10, 2011 from IPO Proceeds. HDK and SK are related entities as they have common Director/address/ replies through common signatory etc.

47.6.2. I note that during parallel 11B proceedings for the same set of allegation, with respect to the fund transfers to the aforesaid two companies, ATL has submitted as follows: *"The Company outsourced product development to HDK pertaining to jewellery point of sale to enhance the existing product to cater to US based clients."* The said submission of the company indicates that the company outsourced product development to HDK pertaining to jewellery point of sale, which is a different sector from ATL's primary sector of Information Technology. Further, ATL has not submitted any correspondence with HDK or SK for the product development. Moreover, the submission of the company is also not supported by any documentary evidence.

47.6.3. It is observed from the IR that at the time of investigation, the company had submitted that it had received project advances from HDK (Rs. 14.5 crore) and SK (Rs. 10.5 crore) during 10-23 February, 2011 consequent to the development of software project. As the project could not take off, it was cancelled and 'Project Advance Returned'. ATL submitted copies of the 'MoU' of the project.

47.6.4. I note that during investigation, HDK and SK denied signing of any such MoU. However, from WTM order I note that, HDK and SK have submitted that they have not



retained the copy of MoU as when the project was cancelled, they had handed over all the documents back to ATL. In this regard Hon'ble WTM in the said order stated that, *It is interesting to note that when the companies handed over the documents to ATL, they did not retain a copy of it or maintained any record of it. They have not submitted any particulars of the documents handed over including the date and mode of handing over. Moreover, a project worth Rs. 25 crore was about to be executed and there is not a single paper trail in the possession of the companies which shows any discussion about the terms of the project, requirements, employees / people involved in the project or any kind of correspondence prior and post transfer of funds to and fro from HDK and SK to ATL. As per the submissions of HDK and SK during investigation that, the development of ERP software was an essential need to develop and expand their business. It is but natural that if the software was essential to expand their business, they would have approached another IT company to develop the said software or any alternative software for their need after cancellation of the project with ATL. However, they have not submitted anything in this regard including any steps taken in furtherance towards the stated purpose.*

47.6.5. It is observed from the MoU submitted by ATL at the time of investigation that it is deficient in the following manner:

- i. It is not on stamp paper.
- ii. It does not indicate any place.
- iii. It does not bear any witnesses.
- iv. Name and designation of persons executing the MoU are absent.

47.6.6. Apart from the aforesaid MoU, ATL did not provide even a single document / correspondence entered into by ATL with HDK and SK. ATL has also not submitted any agenda items / minutes of meetings of Board of Directors of ATL where there was mention of the entities namely HDK and SK.

47.6.7. It is further observed from the IR that Shri Ravikumar in his statement recorded on January 21, 2016 had stated that he did not know about the background and business activities of HDK and SK. it is unlikely that an entity which is developing certain point of sales software for another entity would not even know about its activities/operations



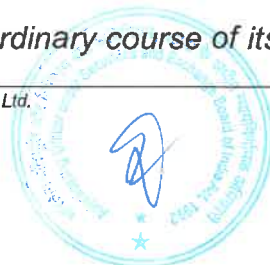
or its signatories particularly when it had received advance also and entered into a MoU. This indicates that there was some other ulterior purpose for which the funds were transferred and the submission regarding software development was an afterthought.

47.6.8. Moreover, it is noted from Shri Ravikumar's aforementioned recorded statement that he has admitted that payment to HDK and SK was not as per objects of the issue as disclosed in the Prospectus relating to IPO of ATL.

47.6.9. Shri Ravikumar, the CMD of ATL in his statement dated 21/01/2016 and Shri Sunil Jeetmal Kothari, Director of HDK/SK in his statement dated 05/02/2016 stated that there was no written correspondence between ATL and HDK/SK. The aforementioned MOU was shown to Shri Sunil Jeetmal Kothari, Director of HDK & SK. In his statement dated 05/02/2016, Shri Sunil Jeetmal Kothari stated that neither he nor anybody else from HDK or SK had signed any MOU with ATL. Thus, This give rise to the question of credibility of the MoU submitted by ATL and also casts a shadow of doubt over the submissions of HDK and SK that the fund transaction was for the development of a custom built software.

47.6.10. Without prejudice, to the aforesaid findings, even if ATL had received project advance from HDK and SK, ATL should have disclosed the amount of project advance received in the Prospectus. The fact that the said amount of Rs. 25 crore received from HDK and SK was not disclosed in the Prospectus, itself shows that it is an afterthought on the part of ATL so as to portray the transfer of funds from IPO proceeds to HDK and SK as genuine.

47.6.11. The IR further observes from the bank account statements of HDK and SK that after ATL received Rs. 25 crore from HDK and SK during Feb 14 - 22, 2011, the funds were further transferred by ATL to its related entity i.e. Corus. Ltd. and the IPO funds that was transferred to HDK was diverted by HDK (partly/fully) to various market entities who have traded in the scrip of ATL after listing. In this regard, Hon'ble WTM in the parallel 11B proceedings has held that, *"HDK has submitted that the nature of transaction was "Loans & Advances" in the ordinary course of its business. It is noted*



that HDK has not submitted a copy of the agreement or any particulars of the agreement based on which the money was advanced to the said entities. HDK has also not submitted any correspondence with the entities to whom it has advanced substantial amount of money running into millions or any other such transaction pre and post such transfers to any other entities which would substantiate its submission that the Loan and Advances were in the ordinary course of its business. Thus, the submission of HDK is not acceptable."

47.6.12. In view of the above, I conclude that ATL has diverted Rs. 25 crore by transferring it to HDK and SK, which was not related to the objects of the issue. It concludes that, HDK and SK were hand in glove with ATL and were parties to the actions and deeds of ATL to divert the IPO money and to not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

47.7. Corus Limited– Rs. 7.28 crore

47.7.1. As mentioned in pre paras, ATL has submitted that there was an agreement between Corus Ltd. and ATL with regard to acquiring two companies based out of USA - viz Line Beyond Inc. and Optech Consulting Inc. As concluded in pre paras that, acquisitions of Line Beyond Inc. and Optech Consulting Inc. were not genuine. In view of the same, i conclude that ATL has diverted Rs. 7.28 crore transferred to Corus Ltd. on March 15, 2011 and the same was not related to the objects of the issue.

47.7.2. Furthermore, as per the statement of Shri Vijay Kumar Sampath, he was asked by Shri Mohan Hosahally Ramakrishna that Shri Ravikumar wanted some known person to be the Director of Corus Ltd. and it has already been brought out in the preceding paragraphs that Shri Vijay Kumar Sampath was acting under the instructions of Shri Ravikumar. Therefore, it can be held that Corus Ltd. was managed /operated by Shri Ravikumar. Thus, in view of the aforesaid,i conclude that Corus Ltd. was hand in glove with ATL and was a party to the actions and deeds of ATL to divert the IPO money and to not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

47.8. ATLs Fixed Deposits / Bridge Loan



47.8.1. During the investigation, it is noted from the bank account statements of ATL maintained with United Bank of India (UBI) and State Bank of Travancore (SBT) that out of IPO proceeds, a sum of Rs. 30 crore (10+ 10+ 10 crore) were used for opening Fixed Deposits (hereinafter referred to as 'FD') and Rs. 20.59 crore were used for settlement of Loan account. Analysis of the same is as follows:

Aarm Finser India Limited and Ecologix Knowledge Solutions Pvt. Ltd.

47.8.2. On March 10, 2011 (immediately after receipt of IPO proceeds), FD A/c Number 0884109015449 of Rs. 10 crore was opened for period of 91 days. This FD was marked as lien for the loan of Rs. 9 crore availed by Aarm Finser India Ltd. (hereinafter referred to as 'AFIL') on April 21, 2011. The said FD was prematurely closed on April 23, 2011 and using the closure proceeds, fresh FD was opened for period of 12 months. However once again this FD was also prematurely closed on February 2, 2012 and on same day 11 new FDs were made. All these 11 FDs were also prematurely closed on next day itself and the amount was credited to ATL Bank A/c Number 0884050108584 with United Bank of India after which an amount of Rs. 10.57 crore approximately (Rs. 10,57,47,000/-) was transferred to AFIL in its bank A/c Number 0884050109079 with United Bank of India. From said A/c of AFIL, an amount of Rs. 9.89 crore approximately (Rs. 9,89,46,553) was utilized on February 3, 2012 to settle the Loan A/c Number 0884300026965 of AFIL.

47.8.3. It was observed that the said Loan A/c Number 0884300026965 related to the loan of Rs. 9.63 crore availed by AFIL on September 28, 2011. It was further observed that this loan availed on September 28, 2011 was itself taken to settle earlier loan of Rs. 9.00 crore (Loan A/c Number 0884050109079) availed on April 27, 2011. It was observed that said Rs. 9.00 crore availed as loan was transferred by AFIL to Ecologix Knowledge Solutions Pvt Ltd (hereinafter referred to as "Ecologix"), a company promoted by Shri Ravikumar (as per Prospectus of ATL) and in which he was also a Director.

47.8.4. It was observed that Ecologix had utilized this amount to settle an outstanding Loan (Loan of Rs. 9.00 crore, availed by it on 11/03/2011 - Loan A/c Number 0884300026521). The said loan of Rs. 9.00 crore availed by Ecologix on March 11,



2011 was credited to Ecologix bank A/c Number 0884050108676 with United Bank of India from where, on same day, the entire amount was transferred through RTGS to Sidd Enterprises and Ridhi Traders (Rs. 6.00 crore and Rs. 3.00 crore respectively) from where the funds were ultimately transferred to entities abroad (viz., Kumkum Trading, Oracle Imports, Uniglobe Trading, Shankeshwar Diamonds).

47.8.5. Thus, through a web of transactions via FDs made through the proceeds of IPO on March 10, 2011, a loan availed by AFIL on April 27, 2011 was paid off by transferring the fixed deposit proceeds made out of IPO funds, to the extent of Rs. 10.57 crores to AFIL on February 3, 2012. The said loan was taken by AFIL to transfer the funds to Ecologix, a company promoted by Shri Ravikumar to pay off the loan taken by it on March 11, 2011, the proceeds of which were transferred abroad through layered transactions.

47.8.6. It is noted from the KYC documents that Directors of AFIL are Shri D Veda Vyasa Rao and Shri Anil Kumar P, both of whom are employees of the ATL. It is already noted that Ecologix is a related company to ATL. It is therefore concluded that out of the Rs. 10 crore which was kept as FD out of IPO proceeds, Rs. 9 crore were in effect, transferred abroad to various entities (by routing through ATL's related entities) and an amount of Rs. 1 crore (approximately) was utilized for paying the interest on loan taken by AFIL. Hence, the entire Rs. 10 crore which were kept as FD were not utilized for IPO objects.

47.8.7. On March 10, 2011 (immediately after receipt of IPO proceeds), Second Fixed Deposit with United Bank of India (Account Number) - 0884109015458 of Rs. 10 crore was opened for 91 days. This FD was closed prematurely on April 27, 2011 to open another FD A/c Number 0884109016165 for 12 months which was lien marked to loan of a group company of ATL i.e. Ecologix dated September 28, 2011. On February 1, 2012, this FD closed prematurely and 11 new FDs were opened (1 for Rs. 50.00 lakh and 10 for Rs. 95.00 lakh each - FD A/c numbers being various numbers between 08841090108747 to 08841090108844). Again all these 11 FDs were prematurely closed on February 2, 2012 (next day after opening of these FDs) and amount was credited to ATL Bank A/c Number 0884050108584 and thereafter on same day an



amount of Rs. 10.20 crore was transferred to Ecologix's United Bank of India A/c Number 0884050108676.

47.8.8. Of these, on February 2, 2012, Rs. 9.88 crore approximately were utilized to settle United Bank of India Loan A/c Number 0884300026974 of Ecologix (Rs. 9.00 crore taken on September 28, 2011). This amount was received by ATL (routing through bank accounts of entities managed /controlled by ATL). Further, ATL had utilized this amount in the following manner:

- i. Rs. 7.64 crore utilized to acquire Mindriver.
- ii. Rs. 84.18 lakh was transferred to Shri Ravikumar and his relatives.
- iii. Rs. 31.00 lakh was transferred to ATL State Bank of Travancore bank A/c Number 67042921027.

47.8.9. In a nutshell, from the IPO proceeds of Rs. 10 crore, loan availed by Ecologix on September 28, 2011 was paid off on February 2, 2012. It has already been concluded that transaction of ATL with Ecologix is not genuine and based on the above, it is further concluded that from the loan taken by Ecologix, Rs. 7.64 crore was used for IPO objects (acquiring Mindriver) and an amount of Rs. 2.36 crore was diverted for some other purpose not related to the objects of the issue.

47.8.10. Thus, in view of the above, It is concluded that AFIL and Ecologix (who were the related entities of ATL) were also hand in glove with ATL and were parties to the actions and deeds of ATL to divert the IPO money and to not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

Virtus Tech Pvt. Ltd

47.8.11. On March 11, 2011, Third Fixed Deposit with United Bank of India (Account Number) – 0499100453561 of Rs. 10 crore was opened for 91 days. It was observed that said FD was marked as lien for the Loan of Rs. 9 crore availed by Virtus Tech Pvt. Ltd. on April 27, 2011. However, the FD was pre-maturely closed on April 21, 2011 and closure proceeds were credited in the account ATL UBI Bank A/c Number 0499050013333 and fresh FD for Rs. 10 crore was created on the same day. The process of premature closing and making fresh FDs continued multiple times and FD



closure proceeds were finally credited in the ATL's United Bank of India A/c Number 0499050013333 on December 29, 2011 (Rs. 10.00 crore).

47.8.12. On same day, Rs. 9.80 crore were transferred to United Bank of India A/c Number 0499050149457 of Virtus Tech Pvt. Ltd. from where the funds were utilized to settle an existing Loan A/c of Virtus Tech Pvt. Ltd. (Loan A/c Number 0499300147361) which was earlier availed by Virtus Tech Pvt. Ltd. on September 28, 2011 (Rs. 9.64 crore). The loan taken on September 28, 2011 was indicated to have been availed to settle earlier loan of Rs. 9.00 crore taken on April 21, 2011 (Loan A/c Number 0499300147088).

47.8.13. The loan of Rs. 9.00 crore availed on April 21, 2011 was credited in United Bank of India Bank A/c Number 0499050149457 of Virtus Tech Pvt. Ltd. and on same day an amount of Rs. 9.10 crore was transferred to United Bank of India Bank A/c Number 0499050149440 pertaining to Mindriver Systems India P. Ltd. (as per ATL, whose 100% shares were purchased by ATL / Shri Ravikumar). On same day viz., April 21, 2011, Mindriver Systems India P. Ltd. utilized this amount to settle its outstanding Loan A/c Number 0499300146982 (Rs. 9.12 crore approximately) which it had availed on March 11, 2011 (Loan Amount being Rs. 9.00 crore). As per the information provided by the United Bank of India, the said amount of Rs. 9.00 crore was credited to Mindriver Systems India P. Ltd. UBI A/c Number 0499050149440 from where an amount of Rs. 5.00 crore was transferred to an entity namely Mayur Trading Co. (Axis Bank account N.9002003787) and Rs. 3.90 crore were transferred on to Binary Spectrum (subsidiary of ATL) on March 12, 2011 and March 17, 2011 respectively and Rs. 6.5 lakh were withdrawn in cash on March 17, 2011. The amount transferred to Binary Spectrum was further transferred abroad. From Mayur trading, Rs. 5.00 crore was transferred to Vandana Gems on March 12, 2011 and from Vandana Gems and on same day it was further transferred to Lee Lee Exports.

47.8.14. I note that Virtus in its reply in the instant proceedings has stated that, they were unaware of the bank account in which the abovementioned transactions has taken place and subsequently it came to know that an account in UBI under the name of Virtus and transactions thereof were in fact controlled by D ravikumar and Shri Anil



Kumar P and as a result a declaratory suit in the Hon'ble City Civil Court Judge at Bangalore was filed against D ravikumar and Shri Anil Kumar P and it has further submitted that virtue has been indemnified by D ravikumar and Shri Anil Kumar P against any claims, damages or liabilities arising out of bank account under the name of Virtus in UBI. I note that declaratory suit in the Hon'ble City Civil Court Judge at Bangalore is pending before court.

47.8.15. From the perusal of notarized deed of indemnity submitted by Virtus vide letter dated November 12, 2021, I note that, Virtus itself was formed with the mutual understanding of Ravi Kumar and Rahuldev A Holla, Ramesh Shetty (Directors of Virtus), consequent to an MOU (dated 11/12/2009) and even the shareholding to the extent of 80% was sold by the said directors of Virtus to Anil Kumar P, at the consent of Ravi Kumar .i also note From the KYC statement of Virtus Tech Pvt. Ltd. obtained from United Bank of India, it is observed that Shri Anil Kumar P who was an employee of ATL (accounts executive), was the authorized signatory of bank account of Virtus Tech Pvt. Ltd.

47.8.16. Virtus in its letter dated January 28, 2022 has stated that, *"the duo executed indemnity bond and accepted in the said indemnity bond that they have opened the account fraudulently in United Bank of India and also undertook to make good the loss if any caused due to the same"* In this regard, I note that nowhere in the indemnity bond it has been mentioned that, account was opened fraudulently by D ravikumar and Shri Anil Kumar P in the name of Virtus and Virtus had no knowledge of the same.

47.8.17. In view of aforesaid, it is observed that the account of Virtus Tech Pvt. Ltd. was managed by ATL and hence, it is established that out of the Rs. 10 crore which was kept as FD out of IPO proceeds, Rs. 8.9 crore in effect, was diverted to entities in abroad (by routing through various entities including Mindriver Systems India P. Ltd., Binary Spectrum, Mayur Trading and Vandana Gems. Further, an amount of Rs. 1 crore was used for paying the interest on loan taken in the name of Virtus Tech Pvt. Ltd. Hence, Rs. 10 crore which were kept as FD were not utilized for the objects of the IPO. Thus, in view of the aforesaid, I conclude that Virtus Tech Pvt. Ltd. (who was a related entity of ATL) was hand in glove with ATL and was a party to the actions and



deeds of ATL to divert the IPO money and to not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

47.9. **Bridge Loan**

47.9.1. On March 10, 2011 (immediately after receipt of IPO proceeds), an amount of Rs. 20.59 crore approximately was utilized to repay ATL bridge loan with United Bank of India (A/c Number 0884050108584). In this regard, ATL at the time of investigation had stated that said amount of Rs. 20.59 crore approximately was transferred on March 10, 2011 for term loan repayment.

47.9.2. It was disclosed on page 63 of the prospectus that, ATL has availed of a Bridge Loan facility of Rs. 20 crore from UBI for meeting expenses forming part of the objects of the issue. The Bridge Loan was sanctioned by United Bank of India vide their letter dated September 16, 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 January 21, 2011 as under, as certified by the statutory auditor, M/s K. Gopalakrishnan & Co, Chartered Accountants vide letter dated January 24, 2011:

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

47.9.3. Based on the bank account statements and the details provided by UBI, the IR observes that the bridge loan was utilised 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

Equastone Properties Pvt. Ltd.

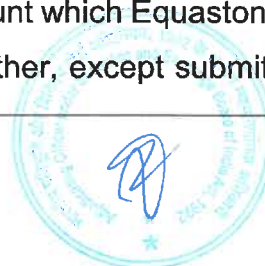


47.9.4. From the MCA website, it was noted that Mrs. Malini Reddy, wife of Promoter CMD of ATL, Shri Ravikumar, was the major Promoter of Equastone and was holding 90% shareholding and other Directors were the employees of ATL, namely Shri Prashanth Kumar and Shri Madhava Reddy. From the KYC details 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, Mrs. 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 had 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. Hence, it is evident that Equastone was a related company of ATL / Ravikumar.

47.9.5. With regards to transfer of funds to Equastone, ATL vide its letter dated 17/07/2012 has stated that the advance amount of Rs. 9.5 crore was paid to Equastone upon signing a construction agreement for software development centre, which was returned by it, subsequent to the cancellation of agreement. It is noted that Equastone had refunded Rs. 6.99 crore to ATL in 2 tranches of Rs. 3 crore on April 06, 2011 and Rs. 3.99 crore on April 29, 2011. From the bank account statement of ATL, Equastone, Virtus and Ecologix, following is observed:

- i. On April 06, 2011, Equastone transferred Rs. 3 crore to ATL. On the same day, Equastone received Rs. 3 crore from Virtus and Virtus received Rs. 6.1 crore from ATL on April 06, 2011.
- ii. On April 29, 2011, Equastone transferred Rs. 3.99 crore to ATL. On the same day, Equastone received Rs. 5.34 crore (approximately) from Ecologix. Further, Ecologix availed a loan of Rs. 9 crore from United Bank of India on April 29, 2011 for which the security was from ATL itself (FDR No. 0884109016165 of ATL, as stated in preceding paragraph).

47.9.6. From the above, it is concluded that the amount which Equastone used for returning to ATL was funded indirectly by ATL itself. Further, except submitting an agreement,



no other supporting documents viz., correspondences prior and post execution of agreement, board resolution, reason and communication of cancellation etc. has been furnished by ATL to strengthen its submission. Further, it is noted from the IR that out of Rs. 7 crore which was transferred by ATL to Equastone, Rs. 6.5 crore was subsequently transferred by Equastone to M/s. Infrastrapedia Systems (USA), an entity based abroad (after routing the funds through AFIL and Kinfotech). Therefore, the submission of the company with respect to transaction with Equastone is not acceptable.

47.9.7. With regard to transfer of amount to its own accounts and to various entities abroad as mentioned in the table above, ATL did not provide any response either at the time of investigation or during the course of instant proceedings till the date of this order

47.9.8. In view of the above, I conclude that ATL has not used Rs. 20.59 crore for the objects of IPO. Rather a major part of this Rs. 20.59 crore was diverted by ATL to various entities abroad which was not part of objects of the issue. It is further concluded that Equastone Properties Pvt. Ltd. (who is a related entity of ATL) was hand in glove with ATL and was a party to the actions / deeds of ATL/ Shri Ravikumar of not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

48. I note that, ATL, vide letter dated 20/05/2016 during investigation has inter-alia replied that transactions related to transferring FD closure proceeds to Ecologix, Aarm Finser, Virtus and Equastone was not related to IPO object and not used from the IPO proceeds. ATL further stated in the said letter that the same was advanced towards developing IT products. However, no documentary evidence was provided in support of its aforementioned submissions by ATL.

49. It is noted from the IR that an amount of Rs. 165.67 crore (net of BRLM fee) was credited to ATL's bank accounts as tabulated below:

Date (of credit)	Bank Name	Bank Branch	A/c Number	Amount (in Rs.)	Bank wise (Amount Rs.)
09/03/2011	Axis	MG Road Bangalore	009010300011097	59,32,49,850	59,47,98,840
15,48,990					



09/03/2011	ICICI	Andheri (W), Mumbai	101205000264	43,36,58,430	43,36,58,430
10/03/2011	UBI	Bangalore Cantonment	0884050108584	41,34,29,400	41,34,29,400
10/03/2011	SBT	Industrial Finance Branch, Bangalore	67042921027	14,36,34,240	21,48,37,977
11/03/2011			7,12,03,737		
Total			165,67,24,657	165,67,24,657	

50. In light of the above findings of audit trail of bank account, it is concluded based on the bank statements that out of Rs. 170 crore raised through IPO, the funds were utilized by ATL in the following manner:

- Total amount utilized by ATL towards IPO objects (including acquisitions made and IPO expenses incurred) is Rs. 14.5 crore.
- Total amount diverted by ATL to its related / connected entities (including funds transferred to connected entities abroad) is Rs. 82.59 crore.
- Total amount diverted by ATL to various entities who had traded in the scrip of ATL is Rs. 28.20 crore.
- Total amount diverted by ATL to other entities (including entities abroad) is Rs. 40.11 crore.

51. I note that, there is discrepancy in the utilization of IPO proceeds for the objects of the issue, as per analysing the reply of the company in reference to utilisation of IPO proceeds only an amount of Rs. 21.92 crore out of Rs. 170 crore was utilised for the objects of the issue. Based on the second perspective which is explanations provided by the company with reference to transactions appearing in its bank statements, an amount of Rs. 14.5 crore was utilised for the objects of the issue. The said discrepancy is because the analysis of bank statements is based only on the initial layers of movement of IPO proceeds between various entities and the subsequent layers, if any, were not examined. Further, various entities through which IPO proceeds was transferred did not cooperate with SEBI during the investigation which hampered the investigation in ascertaining their exact role and the amount of IPO proceeds diverted through them. Also, On the analysis of bank statements, it was noted that an amount of Rs. 1.67 crore was used from IPO proceeds towards payment of instalment for term



loans while ATL stated that it had made a payment of Rs. 19.5 crore towards term loans. Considering the the company's explanations to the utilisation of IPO proceeds, it is held that out of the IPO proceeds of Rs. 170 crore, an amount of Rs. 21.92 crore was utilised for the objects of the issue and the rest was diverted by the company.

52. Thus, a major portion of IPO proceeds was not used for the stated objects. ATL, with the help of aforesaid 11 conduit entities, some of whom were directly or indirectly related to ATL, had diverted these funds for various purposes other than the stated objects of the issue. None of the conduits have replied / made written submissions in the extant proceedings except Virtus. Further, I note that in the parallel 11 b proceedings, HDK International Pvt. Ltd. and SK Universal Pvt. Ltd has made their submissions on the same set of allegations and the same was found to be inadequate By Hon'ble WTM in order dated November 27, 2019.

53. In this regard, the observations of Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others Vs. SEBI* decided on February 11, 2014 is pertinent here. The Hon'ble SAT observed as follows:

"...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."

54. Without prejudice to the above observation of Hon'ble SAT, that they have played a very vital role along with ATL in diverting the IPO proceeds. As noted from the fund flow that the IPO proceeds which were credited to ATL's account was transferred to the said conduits, which as held was not towards the Objects of the Issue and from there the money was subsequently transferred onwards. 6 Noticees out of 11 are related / connected to ATL, namely, Interbrew, Vision, AFIL, Ecologix, Equastone and Virtus. In view of the same, it is held that the aforesaid 11 conduits are also liable for diversion of IPO proceeds.



55.. Section 12A(a) of SEBI Act and Regulation 3(b) of PFUTP Regulations prohibits person to use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under. Section 12A(b) of SEBI Act and Regulation 3(c) of PFUTP Regulations prohibits person to employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange. Section 12A(c) of SEBI Act and Regulation 3(d) of PFUTP Regulations prohibits person to engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under. Regulation 4(1) of PFUTP Regulations lays that no person shall indulge in a fraudulent or an unfair trade practice in securities. Regulation 4(2)(a) of PFUTP Regulations, inter alia, prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. Regulation 4(2)(g) of PFUTP Regulations, inter alia, prohibits a person to enter into a transaction in securities without intention of performing it or without intention of change of ownership of such security.

56. Fraud has been defined under Regulation 2 (1) (c) of PFUTP Regulations which reads as under: -

“fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include--

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;*
- (4) a promise made without any intention of performing it;*
- (5) a representation made in a reckless and careless manner whether it be true or false;*



- (6) any such act or omission as any other law specifically declares to be fraudulent;
- (7) deceptive behavior by a person depriving another of informed consent or full participation;
- (8) a false statement made without reasonable ground for believing it to be true;
- (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even Therefore, in view of the aforesaid findings and given the facts and circumstances of the case though they did not rely on the statement itself or anything derived from it other than the market price.

And “fraudulent” shall be construed accordingly;

57. The diversion of IPO funds has already been concluded as “fraud” within the meaning of PFUTP Regulations.

58. Hence, in view of the aforesaid, I conclude that, these 11 entities Viz., Interbrew Networks Ltd, UAE, Vision Info Inc UAE, Corus Limited, UAE, HDK International Pvt. Ltd., SK Universal Pvt. Ltd., Viraj Mercantile Pvt. Ltd., Maars Software International Ltd., Aarm Finser India Limited, Ecologix Knowledge Solutions Pvt. Ltd., Equastone Properties Pvt. Ltd. And Virtus Tech Pvt. Ltd. have violated Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act, 1992 by being hand-in glove with ATL and being party to the actions and deeds of ATL to divert the IPO money and not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

59. In view of the above, it is amply clear that the entire IPO proceeds was diverted by ATL within a span of 10 days from the receipt of it. So if the entire IPO proceeds were diverted by March 18, 2011. SEBI had vide its letter dated May 18, 2012, had advised ATL to submit the complete details of the utilization of IPO proceeds. Furthermore, it is noteworthy to refer to Section 61 of Companies Act, 1956 and Regulation 24 of ICDR Regulations. Section 61 of Companies Act, 1956 states as follows; “A company shall not, at any time, vary **the terms of a contract referred to in the prospectus or statement in lieu of prospectus, except subject to the approval of, or except on authority given by, the company in general meeting.**” Regulation 24 of ICDR Regulations states as follows; “No issuer shall alter the terms **(including the terms of issue)** of specified



securities which may adversely affect the interests of the holders of that specified securities, except with the consent in writing of the holders of not less than three-fourths of the specified securities of that class or with the sanction of a special resolution passed at a meeting of the holders of the specified securities of that class.” It goes without saying that by reallocating the IPO proceeds to the Objects of Issue, the company has altered the terms of the issue which necessitated approval from its shareholders. I note during investigation ATL has submitted that ,revised utilisation of IPO proceeds was approved by the Board of Directors at their meeting held on August 14, 2012 and was also intimated to the shareholders of the company, vide advertisements in English and vernacular in the "Business Line" and "Vijay Karnataka" respectively, on August 15, 2012, besides intimations to the BSE Ltd. and NSE. It is further submitted that the revised utilisation of the IPO proceeds was approved by the shareholders of the company at the 11th AGM held on September 28, 2012. In this regard, I note that the company has not submitted the copy of the advertisements made by it on August 15, 2012 or proof of dispatch of the notice to its shareholders for the AGM. In view of the same, the veracity of ATL's claim cannot be ascertained. Further, as held in preceding paragraph, the entire IPO proceeds was diverted within a span of 10 days from the receipt of it. So if the entire IPO proceeds were diverted by March 18, 2011, then the entire episode of taking shareholders' approval after almost 17 months, is an afterthought. It is pertinent to note that the aforesaid AGM was called only after SEBI had started the investigation in the matter. SEBI had vide its letter dated May 18, 2012, had advised ATL to submit the complete details of the utilization of IPO proceeds.”

60. Even assuming that the company has utilized the IPO proceeds as per the revised utilization, the same was done before getting the requisite approval from its shareholders as laid down under the aforesaid provisions of law as it is company's own submission that AGM was called on September 28, 2012 for seeking approval of revised utilization of IPO proceeds.

61. I conclude that, an act of fraud does not regain the status of legality or permissibility by virtue of the said shareholders subsequent sanction. Therefore, the said sanction even if it is there, will not alter the nature of the fraud committed.



62. ATL had raised money by declaring a particular set of objects of the issue but as held in this order, the IPO proceeds were not utilised by ATL as stated in the Prospectus but were diverted, goes on to show that the act of diversion of IPO proceeds by the company undermines the good faith dealing between ATL and the investors. It also undermines the faith reposed in it by its investors. The said act of the company does not conform to the fair and transparent principles of transactions in the stock market and is an unfair trade practice. In view of the same, it can be held that the aforesaid act of ATL is an unfair trade practice. Thus, ATL is liable for diversion of IPO proceeds which has led to the violation of Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act by playing their as it has significantly deviated from the Objects of the Issue and not utilising the IPO proceeds as per the objects stated in the Prospectus and is liable for penalty under section 15HA of SEBI Act 1992.

63. I note from the prospectus that, Ravi Kumar Doraiswamy was the Chairman and Managing Director of the company at the time IPO. The said fact is also not disputed by him. In this regard, I note that, Hon'ble High Court of Bombay in the matter of *Garda Chemical Pvt. Ltd. vs. R Parthasarthy, Asst. Collector Central Excise* decided on October 15, 1983 has held that: "*It is not disputed that the accused No. 2 is the Managing Director and is in overall charge of the Company.*"

64. In view of the observation of Hon'ble High Court, it is clear that the Managing Director is in overall charge of the business of the company and has been vested with substantial powers of management. He is in charge of the day to day affairs of the company and is bound to discharge his functions with utmost care, skill and diligence. He being the senior most full time executive of the company is responsible in formulating and implementing the company policies and strategies towards the profitable growth and operation of the company. It has already been held in the preceding paragraphs that the company had come out with an IPO and the proceeds of the IPO were diverted. I note the existence of following facts and circumstances having relevance to the role of the Shri Ravikumar. The fact that he is senior most executive of the company with substantial powers of management and is responsible for execution of companies policies. It has been concluded that IPO proceeds were diverted using various conduits and some of the conduits were controlled by him viz., Corus Ltd., and Interbrew. He had



asked Shri Mohan H Ramakrishna to introduce him to few people who can be Directors in the company controlled / floated by him. These companies were used to divert the IPO proceeds. He had admitted in his statement recorded on January 21, 2016 that payment to Viraj Mercantile Pvt. Ltd., HDK International Pvt. Ltd. and SK Universal Pvt. Ltd. were not as per the objects of the issue. Further, funds from the bridge loan were transferred to a company, controlled by his wife and whose Directors were the employees of ATL. The preponderance of probability of these facts and circumstances clearly indicate that the said scheme is possible only with the knowledge and active role of the Managing Director, Shri Ravikumar. Shri Ravikumar, Managing Director of the company is responsible for all the deeds / acts of the company related to diversion of IPO proceeds and thus, had played fraud and misled the investors by deviating from the objects of the issue and not utilizing the fund raised through IPO towards the objects as set out in the prospectus. It has already been discussed in preceding paragraphs how diversion of IPO proceeds tantamount to fraud. Thus, I conclude that Shri Ravikumar being CMD of ATL has violated Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act and is liable for penalty under section 15HA of SEBI Act 1992.

65. I note from the material available on record that, Shri Mohan H Ramakrishna and Shri Subrahmanya Dandala Kannayya Reddy were the Non- Executive and Independent Directors of ATL who were also the members of Audit Committee of ATL during the financial years 2010-11 and 2011-12 i.e., during the period when ATL came out with an IPO.

66. Mr. Mohan has also submitted that if a company has any officer specified under Section 2 (30) clause (a) of the Companies Act, 1956, the other Directors will not be held as officer in default per Section 5(g) of the Companies Act, 1956. The said provision is applicable for the violations committed under the Companies Act, 1956. The said provision is not applicable in the extant matter as the instant matter deals with the provisions of PFUTP Regulations and similar provisions under SEBI Act where the liability is on every person who has committed an act or omission which can be with deceit or with recklessness, as the definition of fraud under the PFUTP Regulations is



broad enough to capture reckless omission, the effect of which is inducement of the investors, as in this case.

67. Mr. Mohan in his submissions has accepted that he regularly participated in all Board meetings of the company of which he was notified. I note from the Audit Committee minutes dated August 14, 2012 that *"the committee also took on record the statement of utilization of funds from IPO where the projected expenses and the actual amount spent as on August 14, 2012 has been recorded."* The same indicates that if the statement of utilization of IPO funds was presented before the Audit Committee, then Mr. Mohan was aware that the company was utilising the IPO proceeds in a particular way and he had the opportunity to review the same and satisfy himself that the funds were utilized in line with the objects of the issue. For example, with respect to the acquisitions of Line Beyond Inc. and Optech Consulting Inc., the Board of the company had authorized Shri Ravikumar to take steps to acquire the said companies. Thus, the Noticee being part of the Audit Committee as well as being on the Board of the company, should have been aware of the Board resolution which in essence indicates that steps had been taken in furtherance of IPO objects.

68. Mr Mohan also submitted in his reply that, *In fact, my appointment is contrary to the Proviso to Section 177(2) of the Companies Act, 2013 insofar as I do not meet the requirement stipulated therein i.e. ability to read and understand the financial statements. I accepted my appointment to the Audit Committee solely at the earnest request of Mr. Doraiswamy.* In this regard, It is noted from the submissions of the Noticee that he has done his post-graduation in business management. Given his educational background, it does not seem plausible that he cannot read and understand the financial statements and is not aware of the role and responsibilities of an Audit committee member. Even for a moment, if the Noticee's submission is accepted, it is noted that he, as per his own admission that, he was the Director of the company for 8 years (2006-2014). Thus, he has been associated with the company in the capacity of a Director for a substantial period of time and now at this late stage he cannot plead ignorance about his role as a Director and as a member of audit committee. While on the one hand, the ignorance pleaded by him cannot be ex facie accepted, especially in the light of a charge of swindling or siphoning off of the proceeds of a IPO, at the same time, he has not



submitted any correspondence with the company where he has highlighted his need to be educated on the duties of an Independent Director and Audit Committee member. In other words, he cannot accept the role of Independent Director including being the member of the Audit Committee lightly and then claim ignorance. This in itself shows recklessness in reviewing the accounts and utilization of IPO proceeds by Mr. Mohan being the audit committee member

69. Mr. Mohan has stated that, *Mr. ravi kumar made a consistent effort to avoid the Committee performing its functions and engaging in proper deliberation. In the circumstances, it became impossible for the Committee to take any effective steps to discover any fraud.* The said submission of the Noticee is not correct in light of the provisions of Clause 49 II (C) 1 of listing agreement which empowers the Audit Committee to investigate any activity within its term of reference. Clause 49 II (D) 5A of the Listing Agreement which unequivocally states that, *it is the role of the Audit Committee to review with the management, the statement of uses / application of funds raised through an issue.* Besides, being a member of the Audit Committee, his role envisaged diligent handling of the accounts and verification of financial details which could have alerted him to the diversion of IPO proceeds. A specific such term of reference as mentioned in Clause 49 II (D) 5A coupled with the investigation power of the Audit Committee, mandates the Directors forming part of the Audit Committee to take steps to ensure that the company utilised the IPO proceeds as per the stated objects of the issue. Noticee has not shown what steps he had taken to ensure that the company utilised the IPO proceeds as per the stated objects of the issue. For example, the Noticee could have made inquiries pertaining to the acquisitions such as valuation report, terms of the agreement, parties involved, when the money was transferred etc. If the Noticee would have made the inquiries, he would have known that the acquisitions of Line Beyond Inc. and Optech Consulting Inc., were not genuine. With respect to setting up of software development centre, Noticee could have asked for the Board resolution wherein it was decided to revise the amount earmarked for it as declared in the Prospectus as the revision was for substantial amount, Rs. 26.18 crore to 5.74 crore. It would have brought to his notice that no such Board resolution is there and the same could have led to further inquiry. Similarly, with respect to Establishment of Overseas Offices, inquiries could have been made about the progress of the acquisition of new



offices and the mode and manner of its acquisitions and payment for the same, as in the given case the money was paid in lump sum as claimed by company before acquiring the offices.

70. Mr. Mohan has referred to WTM order dated 04.02.2021 wherein WTM had disposed off the SCN issued to Mr. Mohan for the alleged violation of non-payment of dividend declared to the shareholders for the financial year 2011-2012. Also Noticee has stated that, *during my tenure with Acropetal, I have only worked as a non-executive and Independent Director and has not been engaged in the day to day management and affairs of the said company.*

in this regard, I note that Noticee has submitted various case laws and judgements in this respect in its reply in the extant adjudication proceedings and WTM order dated 04.02.2021 taking plea of ignorance for being *non-executive and Independent Director* (NEID) of ATL, having considered the case laws and judgements cited by the Mr. Mohan, I don't find the ratio applicable to facts and circumstances of the instant matter as it is inter-alia alleged that, Shri Mohan Hosahally Ramakrishna being audit committee member for FY 2010-11 and 2011-12 of ATL has violated Regulations 3 (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003 read with Sections 12A (a), (b) and (c) of SEBI Act, 1992 by deviating from the objects of the issue and not utilising the IPO proceeds as per the objects stated in the prospectus. Mr. Mohan was member of Audit committee and the role of the Audit Committee becomes all the more significant when the company comes out with an IPO. As has been mentioned in the Clause 49 II (D) 5A of the Listing Agreement which states that,

"the role of Audit Committee includes reviewing, with the management, the statement of uses / application of funds raised through an issue (public issue, rights issue, preferential issue, etc.), the statement of funds utilized for purposes other than those stated in the offer document /prospectus/ notice and the report submitted by the monitoring agency monitoring the utilisation of proceeds of a public or rights issue, and making appropriate recommendations to the Board to take up steps in this matter".

71. Mr. Mohan stated that, *it was in this backdrop that both Mr. Kamath and I were constrained to resign on the first evidence that Mr. Doraiswamy was not acting in accordance with law. However, Mr. Doraiswamy refused to accept my resignation. I was*



forced, therefore, to file the same directly with the Registrar of Companies. It is pertinent to submit that my name has not yet been deleted from the record maintained with the Registrar of Companies, which I believe, to the best of knowledge, is owing to the failure of Acropetal to file necessary forms with the Registrar of Companies, and other non-compliances. The said fact has been submitted to your good office in my earlier statements and representations. in this regard, I note from WTM order dated 04.02.2021 that, SEBI has issued letter dated February 13, 2013 to the Company asking it to furnish information regarding declaration and payment of dividends under the Companies Act, 1956 and reasons if any, for default. thus, it would have been only after the said letter, Mr. Mohan would have become aware of certain issues relating to payment of statutory dues and dividends, which payments have been approved by the Board/ were required by law, had not been made timely and he resigned by way of letter dated May 14, 2014, consequent to complaint filed by the United Bank of India on December 2, 2013 alleging that the Company and its directors named therein had submitted fabricated documents to avail a term loan of Rs. 20 crores and an FIR lodged by the CBI on December 13, 2013 consequent to the complaint

72. Mr. Mohan has stated that, *"I have been diligent in the performance of my duties as a Non-Executive and Independent Director. Mere presence at the Board meetings where the details of the transactions were not even discussed, is not adequate to attribute knowledge of the same to me, making me liable therefor."* He further submitted that, *"In any event, as I have not been part of the discussions pertaining to the fund flow for the IPO, nor have I been informed of the transaction, the irregularities, if any, were not noticed in the audit report, and hence, not brought to the notice of the Audit Committee"*, the said submissions by Mr. Mohan is not accepted in light of the fact that he has signed the minutes of the board meeting where the utilization of IPO Proceeds was very well mentioned and being audit committee member he has all the powers to know the details of the transactions. Moreover, he has not demonstrated with proof as to how being part of the Board and Audit Committee he had taken steps to ensure the utilization of IPO proceeds as per the stated objects or raised any concern with respect to details of transaction related to utilisation of IPO proceeds. Rather, his actions show otherwise. As noted from the IR, at the time of his statement recording, he had submitted that it was he who had introduced his partner, Shri Vijay Sampath to Shri Ravikumar/ATL and



based on the request of Shri Ravikumar, he had requested, Shri Vijay Sampath to sign papers relating to formation of Corus Limited & Interbrew (conduits which were used to divert IPO proceeds) and other papers relating to said companies. He had also stated that based on the request of Shri Ravikumar, he made some of his employees, Shri Vijay Sampath and wife of Shri Vijay Sampath sign the share application form in the IPO of ATL. Furthermore, he had also stated that based on the request of Shri Ravikumar, he had also requested some of his employees to become Director of Equastone Properties Pvt Ltd, (funds from bridge loan was transferred to the company from where it was transferred abroad to related entities) a company promoted by Ms. Malati Reddy, wife of Shri Ravikumar. The aforesaid indicates that Shri Mohan H Ramakrishna has not carried out his role and responsibility as an Independent Director / member of Audit Committee in an honest and diligent manner but was rather reckless in carrying out his responsibilities.

73. AR of Mr. Mohan has stated that, *We state that our client is not liable to be proceeded against with an inquiry and penalty since the doctrine of mitigation squarely applies in the present circumstances as our client is already under restraint since 27.09.2019, i.e more than two years. It may be appreciated that the restraint is continuing and is prohibitive in terms of opportunities in the market and in professional life and the stigma attached is detrimental to social life and imposition of any monetary penalty shall add to the burden to our client.*

74.. In this connection, it is pertinent to mention the Hon'ble SAT's observations in the matter of *Sunita Gupta Vs. SEBI in the Appeal No. 193 of 2016 decided on April 21, 2017*, which are reproduced hereunder: *"Where a person violates the provisions contained in the SEBI Act and the regulations made thereunder, then, SEBI is empowered to initiate penalty proceedings against that person under Chapter VIA of SEBI Act and also issue directions in the interests of investors or securities market as it deems fit under Chapter IV of SEBI Act. Thus, the powers conferred on the Board under Chapter IV are independent from the powers to impose penalty under Chapter VIA of SEBI Act. Accordingly, in the present case, since the appellant had indulged in synchronized/ circular trades in gross violation of SEBI Act/ PFUTP Regulations and the same was detrimental to the interests of the investors and securities market, the Board*



deemed it fit to issue direction under Chapter IV in addition to the penalty imposed under Chapter VIA of SEBI Act. Therefore, in the facts of present case, initiation of proceedings under Chapter IV even after initiating proceedings under Chapter VIA cannot be faulted.

75. Therefore, in my view, the principle of double jeopardy does not apply to the present proceedings, as the directions issued by Hon'ble WTM of SEBI are under Section 11 and 11B of the SEBI Act and the instant proceedings have been initiated under Chapter VI of SEBI Act to inquire, adjudicate and impose monetary penalty as applicable. In view of the above, I find no merit in the argument put forth by Mr. Mohan.

76. I note that Shri Subrahmanya Dandala Kannayya Reddy did not submitted his reply to SCN till the date of this order. In this regard, the observations of Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others Vs. SEBI decided on February 11, 2014* is pertinent here. The Hon'ble SAT held the following:

"...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."

77. I note that, Shri Subrahmanya Dandala Kannayya Reddy has made his submissions during the parallel 11B proceedings for the same set of allegations. With respect to which Hon'ble WTM has held that: *"Shri Subrahmanya Dandala Kannayya Reddy has submitted that he had relied on the Compliance Officer, Reports of the Statutory Auditors and the Secretarial Audits, which has led him to believe bona fide that there had been no contraventions of the Listing Agreement and applicable regulation and laws. If the submission of the Noticee is accepted, it makes the Audit Committee, a mere rubber stamp and negates the onerous duty entrusted on it by the Board to look into the finances of the company. In terms of provision of Clause 49 II (D) 5A of the Listing Agreement, it is the role of the Audit Committee to review with the management, the statement of use / application of funds raised through an issue and the same cannot be abdicated to Compliance Officer / Auditor's. "*



78. I note that, it was duty of Shri Subrahmanya Dandala Kannayya Reddy (Noticee no. 4) & Shri Mohan Hosahally Ramakrishna (Noticee no. 3) being audit committee members of ATL to review the utilization of funds raised by ATL through IPO and make appropriate recommendations to the Board of the Company as has been mentioned in the Clause 49 II (D) 5A of the Listing Agreement. However, as held in pre paras , ATL has deviated from the objects of the issue within 10 days of receipt of funds itself and has not utilized the IPO proceeds as per the objects as stated in the Prospectus. The members of the Audit Committee were under legal obligation to review the statement of utilization of IPO proceeds. By no stretch of imagination, it can be said that any meaningful review was exercised by them when without making any inquiry or looking into the underlying transaction, they have accepted the statement of utilization of IPO proceeds as and when it was presented to the committee. Nothing has been brought on record by the said Noticees to demonstrate the due diligence exercised by them while conducting the review of utilization of IPO proceeds. In a scenario, where false statements of utilization of IPO proceeds are placed before the entities who are obligated to exercise due diligence to satisfy themselves that there are reasonable grounds to be believe that such statements are true, the omission to exercise due diligence itself falls within the category of fraud, if the omission is either deliberate or reckless. One may omit to do the due diligence either when he is aware that the statement is false or he does not believe it to be true or he is so reckless and careless whether it be true or false. Regulation 2(1) (c) (5) of PFUTP Regulations in fact specifically makes such reckless representation as a category of fraud. As stated in preceding paragraphs, if the Audit Committee member would have carried out their role diligently, they would have noticed several red flags. However, the fact of the matter is that they were unable to make any meaningful inquiries with respect to the utilization of IPO proceeds. Hence, it is concluded that Shri Mohan H Ramakrishna and Shri Subrahmanya Dandala Kannayya Reddy being the Audit Committee members have failed to perform their duties in relation to reviewing the utilization of IPO proceeds and apprising the Board members about the misutilization of IPO proceeds and thereby have violated Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act by omitting to perform their legal duty to review the utilization of IPO proceeds, the failure of such duty amounts to an "omission" and such omission was reckless in nature. Such omission even if is without deceit but is reckless and falls within the definition of fraud under PFUTP



Regulations, as fraud under PFUTP Regulations can be committed by virtue of reckless omission as well. As a result of such reckless omission, IPO proceeds were diverted within 10 days of its receipt by ATL and were utilized for objects other than those mentioned in the Prospectus. Thus, Shri Mohan Hosahally Ramakrishna (Noticee no. 3) and Shri Subrahmanya Dandala Kannayya Reddy (Noticee no. 4) being audit committee members of ATL have violated Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act and are therefore, liable for monetary penalty under Section 15HA of SEBI Act.

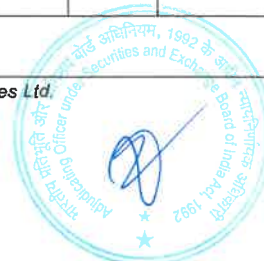
Wrong quarterly disclosures to NSE & BSE regarding utilization of IPO proceeds.

79.I note that, under Clause 43 & 43A of listing agreement, listed entities have been mandated to disclose *inter-alia* details of utilization of funds raised upon public issue of specified securities and to furnish to the stock exchange on a quarterly basis, a statement indicating material deviations, if any, in the use of proceeds of a public or rights issue from the objects stated in the offer document.

80.The shares of ATL are listed in BSE & NSE (hereinafter referred to as "Stock Exchanges") and in compliance with the clause 43 and 43A of listing agreement as mentioned above, ATL has furnished following information to stock exchanges regarding utilization of IPO proceeds for the quarter ending March 31, 2011, June 30, 2011, September 30, 2011, December 31, 2011 and March 31, 2012:

(in Rs. crore)

Description	Q.E Mar 31, 2011		Q.E Jun 30, 2011		Q.E Sept 30, 2011		Q.E Dec 31, 2011		Q.E Mar31, 2012	
	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
Amount received from IPO	170.00	170.01	170.00	170.01	170.00	170.01	170.00	170.01	170.00	170.01
Proposed Acquisitions	55.00	37.35	55.00	51.96	55.00	51.96	55.00	51.96	55.00	51.96
Setting up of Software Development Centre and	26.18	9.50	26.18	9.50	26.18	9.50	26.18	-	56.18	5.74



Description	Q.E Mar 31, 2011		Q.E Jun 30, 2011		Q.E Sept 30, 2011		Q.E Dec 31, 2011		Q.E Mar31, 2012	
	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual	Projected	Actual
Corporate Office										
Expansion & Establishment of overseas offices	19.44	3.12	19.44	4.24	19.44	4.24	19.44	4.24	19.44	19.28
Part Repayment of Term Loans	25.00	5.00	25.00	7.78	25.00	9.98	25.00	14.81	25.00	19.34
Additional working capital requirements	25.00	25.00	25.00	38.42	25.00	37.32	25.00	51.83	25.00	58.25
Public Issue Expenses	15.00	11.12	15.00	11.12	15.00	11.12	15.00	11.12	15.00	11.12
General Corporate Purposes	4.36	1.04	4.36	3.54	4.36	4.29	4.36	4.29	4.36	4.29
Total	170.00	92.14	170.00	126.57	170.00	128.42	170.00	138.26	170.00	170.01
Temporary deployment of unutilized amount as follows:										
Fixed Deposit in Bank	-	40.00		40.00		40.00		30.00	0	0
Balance in current account with schedule bank	-	37.86		4.43		1.58		1.74		
Amount unutilized		77.86		43.43		41.58		31.74		

81.I note that, ATL during investigation has stated that there is no material deviations in the use of proceeds of a public issue from the objects stated in the offer document and revised utilisation of IPO proceeds was approved by the Board of Directors at their meeting held on August 14, 2012 and was also intimated to the shareholders of the

company, vide advertisements in English and vernacular in the "Business Line" and "Vijay Karnataka" respectively, on August 15, 2012, besides intimations to the BSE Ltd. and NSE. It was further stated by ATL that, the revised utilisation of the IPO proceeds was approved by the shareholders of the company at the 11th AGM held on September 28, 2012. In this regard, I note that, ATL has not submitted the copy of the advertisements made by it on August 15, 2012 or proof of dispatch of the notice to its shareholders for the AGM. In view of the same, the veracity of ATL's claim cannot be ascertained. Further, as held in preceding paragraph, the entire IPO proceeds was diverted within a span of 10 days from the receipt of it. So if the entire IPO proceeds were diverted by March 18, 2011, then the entire episode of taking shareholders' approval after almost 17 months, is an afterthought. It is pertinent to note that the aforesaid AGM was called only after SEBI had started the investigation in the matter.

82. As noted in the pre-paras, it is amply clear and has been concluded that, out of Rs. 170 crore raised from its IPO proceeds, the company had utilized only Rs. 21.92 crore towards the stated objects of the issue. Hence, it is concluded that ATL had deviated from the objects of the issue and not utilized the IPO proceeds as per the objects as stated in the prospectus. A table depicting findings with respect to the actual utilization of IPO proceeds by ATL vis-a-vis the proposed utilization as mentioned in the Prospectus, have been arrived as follows:

In Rs. crore

S. No.	Particulars	Amount utilized as per ATL		As per Investigation
		As per Prospectus	As per ATL letter dated 11/06/2012 (as on 31/03/2012)	Amount utilized by ATL for IPO objects
1	Proposed Acquisitions	55.00	51.96	13.52
2	Setting up of Software development center & Corporate Office	26.19	5.74	-
3	Expansion and establishment of offices overseas	19.45	19.29	-
4	Part repayment of term loan	25.00	19.35	1.67
5	Additional working capital	25.00	58.26	0.87
6	Public Issue expenses	15.00	11.12	5.86



S. No.	Particulars	Amount utilized as per ATL		As per Investigation
		As per Prospectus	As per ATL letter dated 11/06/2012 (as on 31/03/2012)	Amount utilized by ATL for IPO objects
7	General Corporate Expenses	4.36	4,29	-
	TOTAL	170.00	170.01	21.92

83. Thus, by comparing the above mentioned details regarding utilization of IPO proceeds as disclosed to the exchanges under Clause 43 of the Listing Agreement with the actual utilization as mentioned in the foregoing paras, it is apparent that ATL has made false disclosure to the exchanges under Clause 43 the Listing Agreement and has not submitted material deviations in the use of proceeds of a public issue from the objects stated in the offer document under 43A(1) of the Listing Agreement to the exchanges, I conclude that details of utilization as disclosed to exchanges did not match with the actual utilization as appearing in the bank account statements of ATL. I also note that ATL has not stated anything with regard to the allegations with respect to the same as mentioned in the SCN till the date of this order.

84. IPO is initial public offering by a company to raise funds for the purposes as stated in the Red Herring Prospectus (RHP). All disclosures made in the IPO documents would be the basis for investors to take an informed decision of investment. Therefore, it is primary responsibility of the Listed Company to ensure that IPO funds raised are accounted and reported to investors in case of any deviations from the proposed utilisation of IPO funds and therefore, the accurate and complete disclosures made to the exchanges under clause 43 and 43A of the Listing Agreement are very crucial in this regard.

85. Any disclosure made to stock exchanges by listed company are meant for investors to take an informed decision in respect of their investments. Therefore, it is essential for a listed company to make the disclosure which are factually correct at all times and any wrong disclosure would result in misleading appearance of the facts which would ultimately impact the interest of investors.



86. The basic criterion on which the whole Listing Agreement based is Corporate Governance. By way of Listing Agreement *inter-alia* Stock Exchange ensures on behalf of SEBI that the Listed Companies are following good Corporate Governance Practice. investors need adequate disclosure at all times to take well informed investment decisions. Any wrong disclosures by the Listed Companies would hamper the interest of investors in taking an informed decision. Therefore, in view of the aforesaid, I conclude that ATL had violated Clause 43 and 43A (1) of the Listing Agreement by providing wrong quarterly disclosures to NSE & BSE regarding utilization of IPO proceeds. As the violation against the Noticee no. 1 stands established, the Noticee no. 1 is liable for monetary penalty under Section 23 E of the SCR Act., 1956 for failure to comply with provision of listing conditions.

87. I note that, on and from the commencement of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 i.e., as notified on September 02, 2015, *all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, has been rescinded*. However, the present proceeding is saved by below mentioned regulation 103 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 which read as follows:

SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015

“Repeal and Savings

103. (1) *On and from the commencement of these regulations, all circulars stipulating or modifying the provisions of the listing agreements including those specified in Schedule X, shall stand rescinded.*

(2) *Notwithstanding such rescission, anything done or any action taken or purported to have been done or taken including any enquiry or investigation commenced or show cause notice issued in respect of the circulars specified in sub-regulation (1) or the Listing Agreements, entered into between stock exchange(s) and listed entity, in force prior to the commencement of these regulations, shall be deemed to have been done or taken under the corresponding provisions of these regulations”*

Wrong Disclosure and non- disclosure in the Prospectus

88. It has been alleged in the SCN that,



- i) the company had submitted wrong disclosure in the prospectus w.r.t. utilization of bridge loan which is in violation of Regulation 57(1) and 60(7)(a) of ICDR Regulations.
- ii) Equastone, being a related entity of ATL, its financial transactions with ATL were not disclosed in the prospectus.
- iii) Further, the aforementioned wrong disclosure leads to misleading information in the prospectus which is in violation of Regulation 4(2) (f) and (k) of SEBI (PFUTP) Regulations, 2003.

In view of the above, ATL and the signatories to the prospectus (viz. Ravi Kumar Doraiswamy, Ramdas Janardhana Kamath, Subrahmanya Dandala Kannayya Reddy, Mathew James Manimala, Ashok Kumar Gopal Rao Jultha, Mohan Hosahally Ramakrishna, S. Sudheer, Shobha Sudhakar Acharya, Jamili Jalaiah) have violated the provisions of regulations 3 (b), (c), (d), 4(1), 4(2) (f) and (k) of PFUTP Regulations read with section 12A (a), (b) and (c) of SEBI Act and regulation 57(1), 60(7)(a) of **SEBI (ICDR) Regulations, 2009**

89. I note that SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 has been rescinded and SEBI (Issue of Capital & Disclosure Requirements) Regulations, 2018 (hereinafter referred to as "**ICDR, 2018**") as notified on September 11, 2018 and has been brought into force from sixtieth day from September 11, 2018. Regulation 301 of ICDR, 2018 provides as under:

Repeal and Savings

(1) On and from the commencement of these regulations, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements), Regulations 2009 shall stand rescinded.

(2) Notwithstanding such rescission:

a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations.

b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Regulations and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations.



Thus, the present proceeding is saved by above mentioned regulation of ICDR, 2018.

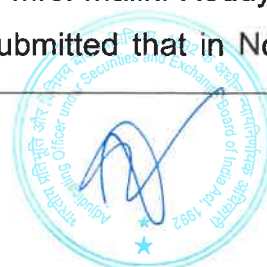
90. With respect to Wrong Disclosure made in the Prospectus, I note that, on page 64 of the prospectus, it was disclosed that ATL had taken a bridge loan of Rs. 20 crore, out of which Rs. 7 crore was used towards construction of building and remaining, towards Working Capital.

91. With respect to Rs. 7 crore used towards construction of building, it has been already held in the preceding paragraphs, that Equastone Properties Pvt. Ltd. (who was a related entity of ATL) was hand in glove ATL and was party to the actions / deeds of ATL/ Ravikumar of not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL and therefore, in view of the aforesaid, I conclude that the transfer of funds of Rs. 7 crore to Equastone, a related party of ATL was not genuine

92. Further, with respect to remaining Rs.13 crore used towards Working Capital, from the perusal of the bank account statements of ATL, it is observed during investigation that, the remaining Rs. 13 crore was transferred abroad, for which no reason whatsoever could be provided by ATL. I also note that, ATL has not submitted anything with respect to the same in the instant adjudication proceedings till the date of this order. Hence, I conclude that entire transaction was not genuine and disclosure as appearing in the Prospectus was wrong.

93. Moreover, with respect to non- disclosure made in the prospectus as mentioned in pre paras, I note that, during investigation, it was observed from the MCA website that, Equastone is a related entity of ATL / Shri Ravikumar as wife of Shri Ravikumar Viz., Mrs. Malini Reddy was the majority shareholder in Equastone and employees of ATL (viz. Shri Prashanth Kumar and Shri Madhava Reddy) were the Directors in Equastone during the period 2010-11. Therefore, it is held that fund transactions with Equastone, being a related party was not disclosed by ATL in its Prospectus.

94. I note from the material available on record that, Mrs. Malini Reddy in her reply dated 22/07/2016 during investigation has inter-alia submitted that in November 2006, she



resigned as director and transferred entire shareholding in Equastone to Prashanth Kumar. She had also submitted copy of annual return of Equastone for the year 2007 which she claimed to have filed with MCA, which shows transfer of shares of Equastone in favour of Prashanth Kumar. However, it was observed from MCA website that said filing was done only on July 25, 2011. Hence, in view of the above, it is evident that Equastone was a related company of ATL / Ravikumar.

95. Further, I also note that, during investigation it was observed from the MCA website that, the authorized signatory to the bank accounts of Equastone was Shri D Vedavyasa Rao, who was Head- Accounts of ATL

96. I would also like to refer to the statement recording of shri Mohan on 19/08/2016 wherein he has stated that, He introduced Shri Vijay (his partner), Shri Ere Gowda (his employee then) and Shri Arun Kumar (his friend) to Shri Ravikumar of ATL, who made Vijay sign numerous documents relating to opening of Companies and Shri Ere Gowda and Shri Arun Kumar were made directors of a Company named Equastone Properties Pvt Ltd (Equastone) by Shri Ravikumar.

97. I note that, ATL during his submissions in 11b proceedings has denied making wrong disclosure in the Prospectus and has submitted that the offer document has been certified by the Merchant Banker and the said certification cannot be ignored or brushed away lightly. In this regard, Hon'ble WTM has *inter-alia* stated that, “ *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. Thus, the submission of ATL is devoid of any merit.* ”

98. In view of the above, the allegation against ATL and its director viz. Shri Ravikumar stands established



99. With respect to allegation on S. Sudheer, Shobha Sudhakar Acharya, Jamili Jalaiah of violation of provisions of Regulations 3 (b), (c), (d), 4(1), 4(2) (f) and (k) of SEBI (PFUTP) Regulations, 2003 read with Section 12A (a), (b) and (c) of SEBI Act, 1992 and Regulation 57(1), 60(7)(a) of SEBI (ICDR) Regulations, 2009 due to aforesaid non-disclosure and wrong disclosure in the Prospectus. I note that, neither of them replied / made written submissions in the extant proceedings. In this regard, the observations of Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others Vs. SEBI* decided on February 11, 2014 is pertinent here. The Hon'ble SAT observed as follows:

"...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."

100. I note that, Shri S Sudheer was the Chief Financial Officer (CFO) of the company and being CFO, he is responsible for the financial planning of the company as well as analysing the company's financial strengths and weaknesses and proposing corrective actions. Further, he is also responsible for company's financial reporting. Company had taken a bridge loan to meet its fund requirements and Shri S Sudheer being the CFO of the company must have played an active role in it. Therefore, if he was diligent enough, he would have realised the actual utilisation of bridge loan and that it was also utilised for a related party transaction.

101. I also note that, Ms. Sobha Acharaya was a Company Secretary of ATL and is also responsible with respect to the veracity of the disclosures made in the Prospectus. The Hon'ble SAT has examined the role of company secretary, insofar as the requirement of making timely and absolutely true disclosures under the Securities Laws is concerned in various appeals filed in the matter of GHC Ltd. In this regard, I would also like to draw attention to the findings of the Hon'ble Tribunal in the matter of *Mr. Bhuvneshwar Mishra vs SEBI (Appeal no. 7 of 2014 – Date of decision – July 31, 2014)* which are as under:

"19. Therefore, the company, the Company Secretary and the Chairman of the company have a greater responsibility on their shoulders to ensure, in a free and fearless manner, that the promoters make timely and absolutely true disclosures as regards their respective shareholding in the company in consonance with various regulations prescribed by SEBI and the Listing Agreement. In fact, the companies are required to maintain a register in this respect and if a vast variation is noted by the company, the



Company Secretary and the Chairman, in the shareholding pattern of the promoters they are duty bound to inform to the stock exchange or even to SEBI accordingly. Such acts of wrong disclosures are condemned as fraudulent and unfair trade practices. 23. In this connection, it is pertinent to note that the Company, the Company Secretary and the Chairman are not mere conduit to pass-on whatever details they receive from the promoters to the Stock Exchanges irrespective of the records maintained by the Company in respect of the shares which may be held by a promoter at given point of time. The Appellants should have acted more diligently and responsibly and should not have been guided by mere legal opinions. It is settled law that legal opinions are only advisory in nature and not binding on anyone. Therefore, no legal infirmity can be attributed to the impugned order which holds all the appellants guilty of violating the PFUTP Regulations, 2003 and imposes monetary penalties on them.”

Thus, she was performing the job of a secretary to the board of directors and it was her duty to aid and advice and assist the board in ensuring that the prospectus contained all the true information before the same was approved

102. Shri Jamili Jalaiah was the Compliance Officer and one of the senior level employee reporting to the Board of ATL and therefore the responsibility to ensure that the company complies with all the legal and regulatory provisions also lies on him. Thus, he is also responsible for the non-disclosure and wrong disclosure in the Prospectus.

103. I note that SEBI has adopted a disclosure based regulatory regime. Under this framework, issuers and intermediaries disclose relevant details about themselves, the products, the market and the regulations so that the investor can take informed investment decisions based on such disclosures. In the case of an IPO by a company, the information about the company is made available to the public/investors in the form of offer document. The public/investors make its decision based on the information provided to them in the form of disclosures in the offer document.

104. Regulation 57 of ICDR Regulations makes it clear that the offer document is required to contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision. 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.



105. In respect of related party transactions, I note that Regulation 57 of ICDR Regulations contemplates disclosure of all '*material*' information in the offer document. The term "*material*" has not been defined under the ICDR Regulations. However, as understood in the market parlance and also defined in Explanation to Regulation 5 of the SEBI (Issue and Listing of Debt Securities) Regulations, 2008 in the same context, "*material*" means anything which is likely to impact an investors' investment decision. In my view, the test to determine whether a fact is 'material' depends upon facts and circumstances of each case. In the extant matter, transaction with Equastone wherein the wife of the Chairman and Managing Director of the company was the majority shareholder and company's employees are the Directors is a material information as the company's financial position and profit / loss may be affected by the existence of related party and by transactions and outstanding balances with such a party. Such concealment of material information does not amount to true, fair and adequate disclosures by the company rather is fraudulent in nature depriving the investors to take an informed investment decision and The term fraud has already been defined in pre paragraphs.

106. Full, fair and timely disclosures form the cornerstone of any disclosure requirement stipulated by SEBI. The guiding principle in a disclosure based regulatory regime is the need for the issuers of securities to disseminate true and complete information to the potential investors in respect of the issuer and the security being issued to enable the potential investors to make their own informed investment decisions. The same is also with a view to bring transparency in the securities market. The access to the securities market for issuers is conditional upon such disclosures. The disclosure-based regime imposes a heavier responsibility on the issuers of securities in respect of the accuracy and completeness of the information disclosed by them.

107. True and fair disclosures are important in an IPO as the investors rely on the statements and disclosures made by the Issuer Company while making investment decisions. If the disclosures made by the company / promoter & director later found to be factually incorrect, it will impact the interest of investors, which in turn mislead the investors and Prospectus is the principal medium through which the investors get information of the strength and weakness of the company, its creditworthiness, credence



and confidence of Promoters and the company's prospects. The purpose of filing the offer document with SEBI is not a mere ritual or formality. Therefore, the importance of contents of the Prospectus in a disclosure regime cannot be over-emphasised. In this connection, it is pertinent to note that Hon'ble SAT in the matter of *HSBC Securities and Capital Markets (India) Private Ltd. vs. SEBI* decided on February 20, 2008 observed that " *an incorrect or wrong information in a letter of offer or other similar documents issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operators and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator*"

108. Further, Hon'ble SAT in the matter of *Brooks Laboratories Ltd. vs. SEBI* decided on March 21, 2018 has further held that, " *Failure to disclose material information and making false/ misleading statements in the RHP/ Prospectus constitutes serious violation of the PFUTP/ ICDR Regulations. Appellants who are Chairman, Managing Director, Chief Executive Officer, Chief Financial Officer and Company Secretary of the Company cannot escape penal liability for the aforesaid violations by merely stating that they had relied on the merchant banker. Appellants were equally responsible to ensure that all material facts were disclosed and further ensure that false and misleading statements were not made in the RHP/ Prospectus.*"

109. Hon'ble SAT in the matter of *V. Natarajan Vs. SEBI*, Appeal No. 104 of 2011, has observed as follows:

"... We are satisfied that the provisions of Regulations 3 and 4 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, were violated... These regulations also prohibit persons from indulging in a fraudulent or unfair trade practice in securities which includes publishing any information which is not true or which he does not believe to be true. Any advertisement that is misleading or contains information in a distorted manner which may influence the decision of the investors is also an unfair trade practice in securities which is prohibited. The regulations also make it clear that planting false or misleading news which may induce the public for selling or purchasing securities would also come within the ambit of unfair trade practice in securities..."



110. In view of the above I conclude that, by failing to make true, fair and adequate disclosures with respect to utilisation of bridge loan and also by not making the disclosure regarding related party transaction in the Prospectus, ATL, **Ravi Kumar Doraiswamy**, S. Sudheer, Shobha Sudhakar Acharya, Jamili Jalaiah have misled the investors which is detrimental to the interest of investors in securities market and thereby violated Regulations 3 (b), (c), (d), 4(1), 4(2) (f) ,(k) and (r) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act and Regulation 57(1), 60(7)(a) of ICDR Regulations, 2009 and are therefore, liable for monetary penalty under Section 15HA of SEBI Act.

111. Further, with respect to the allegation on Independent Directors of ATL viz., Subrahmanya Dandala Kannayya Reddy and Shri Mohan H. Ramakrishna with respect to aforesaid non-disclosure and wrong disclosure in the Prospectus. I note that there is no allegation in the SCN that the wrong and non-disclosure in the Prospectus happened due to their wilful involvement or knowledge or connivance or they failed to exercise due diligence. Further, being the independent directors they are not in charge of the day to day affairs of the company. Moreover, no material or evidence sufficient enough 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. In the absence of any material demonstrating their role or omission with respect to the wrong disclosure wrt bridge loan and non-disclosure. I find that in the facts and circumstances of the case, the liability of independent directors and non-executive directors can be only attributable and in respect of such acts of omission or commission by a company, which had occurred with the knowledge of such Independent Director and Non-Executive Directors, attributable through Board processes, and with their consent or connivance or where they had not acted diligently. In this connection, I note that in the matter of *Inventure Growth and Securities Ltd. Vs. SEBI (Supra)*, the Hon'ble SAT dealt with the liability of Independent Directors in case of misstatement in the Prospectus by a company. The Hon'ble SAT relied on its previous order in *Vijay Remedies & Ors. Vs. SEBI* (Appeal No. 49 of 2003 decided February 11, 2005) and observed as follows:



“31. More particularly, in Appeal no.49 and others decided by this Tribunal on 11th February, 2005 the issue related to certain non-disclosures made in the prospectus, misutilisation of the proceeds of the public issue which are similar to the present case.

32. In para no.5 of the decision, this Tribunal has noted that the appellant therein were independent directors and were not involved in the day to day management and control of the Company. In the circumstances, the argument of the respondent SEBI that they had put their signatures in the prospectus were taken into consideration. It was finally concluded that disclosures could not be attributed to them as they were independent director and they were not associated in the day to day management or control over the Company. In the circumstances, the appeal was allowed.

33. The appellants in Appeal no.362 of 2018 are also independent directors. In Appeal no.361 of 2018, we find the Company had Whole Time Directors, Managing Directors etc. Considering all these facts on record in our opinion appellant in Appeal no.362 of 2018 cannot be held responsible for the non-disclosure as detailed above”

112. Further, the Hon'ble High Court of Judicature at Andhra Pradesh in *Smt. G. Vijaylakshmi & Ors. vs. SEBI [(2000) 12 100 Comp Cases 726 (AP)]* made the following observation– *“It is not necessary that every director is required to be penalized merely because he is a director on the ground that he is responsible for the affairs of the company. If the director can explain that he had no role to play in the alleged default or that he did perform his duties assigned to him under the agreement of his appointment, the presumption of guilt and thereafter penalty cannot be fastened upon him.”*

113. In view of the above and submissions made by Mr. Mohan, I conclude that, there is no evidence, sufficient enough available on record with clarity and conviction to establish the allegation levelled against Subrahmanya Dandala Kannayya Reddy and Shri Mohan H. Ramakrishna with respect to the wrong disclosure and non- disclosure made in the prospectus, unless they are aware of the manipulative and deceptive scheme devised by the ATL. therefore, the violation of Regulations 3 (b), (c), (d), 4(1), 4(2) (f) and (k) of SEBI (PFUTP) Regulations, 2003 read with Section 12A (a), (b) and (c) of SEBI Act, 1992 and Regulation 57(1), 60(7)(a) of SEBI (ICDR) Regulations, 2009 for non-



disclosure and wrong disclosure in the prospectus is not established against Subrahmanya Dandala Kannayya Reddy and Shri Mohan H. Ramakrishna.

Non-compliance of SEBI Summons

114. I now proceed to discuss the issue of noncompliance of the summons by Noticee no. 11 to 14, which has resulted in the violation of the provisions of Sections 11C(2) and 11C(3) of the SEBI Act by Noticee no. 11 to 14 Viz., HDK International Pvt. Ltd., SK Universal Pvt. Ltd., Viraj Mercantile Pvt. Ltd , and Maars Software International Ltd.

115. Before moving forward, the relevant provisions of the SEBI Act allegedly violated by the Noticee no. 11 to 14 are reproduced as under: -

SEBI Act

Investigation.

11C. (2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power.

11C. (3) The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.

116. In this regard, it is pertinent to note that section 11 C (2) clearly obligates any person associated with the securities market to produce/submit the records/information sought by the investigating authority. Further, section 11 C (3) empowers the Investigating Authority of SEBI to require any intermediary or any person associated with the securities market in any manner to furnish such information to, or produce such books



or registers or other documents or record before him or any person authorized by him in this behalf as it may consider necessary if the furnishing of such records/information/documents are necessary.

HDK International Pvt. Ltd. And SK Universal Pvt. Ltd.

117. A brief summary of summons sent to and replies received from Noticee no 11 and 12 / Sunil Jeetmal Kothari(director of HDK / SK) is shown in table below:

Name of entity	Summons Date	Acknowledgement	Additional Comments
HDK International Pvt. Ltd	01/08/2012	Acknowledged vide its undated letter	Sought extension of 1 month in submitting replies.
HDK International Pvt. Ltd	21/09/2012	Acknowledged vide its letter dated 12/10/2012	Incomplete / vague details were provided
HDK International Pvt. Ltd	Letter - dated 23/11/2012	Acknowledged vide its letter dated 12/10/2012	Sought extension of 1 month in submitting replies but no reply was received from HDK / SK.
Sunil Jeetmal Kothari (Director of HDK / SK)	Letter dated 16/02/2016	Acknowledged vide its letter dated 22/02/2016	Incomplete / vague details were provided
Sunil Jeetmal Kothari (Director of HDK / SK)	Letter dated 03/03/2016	Acknowledged vide its letter dated 07/03/2016	No reply provided

From the above table following is noted:



- i) Vide Summons dated 01/08/2012, information was sought from HDK & SK to which HDK & SK vide undated letters sought extension of one month time in submitting their replies.
- ii) Summons dated 21/09/2012 were issued to HDK and SK advising them to provide details by 01/10/2012. Through similar letters dated 12/10/2012, HDK and SK submitted their partial / incomplete / vague reply viz., bank account number not provided, reason regarding funds transfer to indicated entities not indicated, relevant details regarding receipt of funds not provided.
- iii) Vide SEBI letter dated 23/11/2012, HDK & SK were advised to provide complete details regarding the transactions with supporting documents. HDK & SK, vide their letters dated 03/12/2012 each sought an extension of one month for submitting information, however no details were received by HDK & SK in this regard.
- iv) Statement of Shri Sunil Jeetmal Kothari (Director of HDK and SK) was recorded on 05/02/2016 and Shri Sunil Jeetmal Kothari was asked to explain the reason for not submitting the reply to SEBI summons dated despite seeking time of 1 month. Shri Sunil Jeetmal Kothari chose to seek extension of time of about 3-4 days in submitting the relevant details. Vide SEBI letter dated 16/02/2016, Sunil Jeetmal Kothari was directed to submit the relevant documents as undertaken by him during his statement recording. Vide letter dated 22/02/2016, Sunil Jeetmal Kothari submitted vague and incomplete details. Vide SEBI letter dated 03/03/2016, Sunil Jeetmal Kothari was once again directed to submit specific documents (as per Annexure to the letter), however, no documents / details were received by SEBI from Sunil Jeetmal Kothari. I also note that Noticee No. 11 and 12 has not replied in the instant adjudication proceedings till the date of this order.

118. I note that the IA through Summons required the Noticee No. 11 and 12 to *inter-alia* submit the following details/records/documents:

- i) Copy of Annual report, Balance sheet and the Profit & Loss statements for the FY 2010-2011 AND 2011-12.
- ii) Copy of income tax returns for FY 2010-11



- iii) Details of all bank account maintained during January 2011 to May 2011 and as on date of summon
- iv) Bank transaction statements of all bank account maintained for the period from 01.01.2011 to 31.05.2011.
- v) Monetary transactions between Noticee No. 11 and 12 and ATL and Monetary transactions between No. 11 and 12 and certain entities mentioned in summon for the period 01.01.2011 to 31.03.2011
- vi) Money received/transferred by No. 11 and 12 from/to abroad during January 2011 to May 2011
- vii) Details of all the inter corporate deposits given/taken by No. 11 and 12 for the period 01.01.2011 to 31.03.2011
- viii) Details of any entity (Promoter/director/group/associates) connected to No. 11 and 12 applied in IPO of ATL or traded in the scrip of ATL during March to May 2011
- ix) Any additional information/documents/records in connection with the details sought by SEBI from No. 11 and 12

119. However, as mentioned above, I note that, Noticee No. 11 and 12 did not provided details of Annual report, Balance sheet and the Profit & Loss statements for the FY 2011-12, Copy of income tax returns for FY 2010-11, Details of all the inter corporate deposits given/taken by No. 11 and 12 for the period 01.01.2011 to 31.03.201

120. I also note that for the rest of the information sought, Noticee No. 11 and 12 provided incomplete details. Thus, by failing to furnish true and complete information called for through SEBI summons, I conclude that, **HDK International Pvt. Ltd. and SK Universal Pvt. Ltd. has violated Section 11C(2) & 11C(3) of SEBI Act, 1992.**

Viraj Mercantile Pvt. Ltd.

121. A brief summary of summons sent to and replies received from Noticee no. 13 is shown in table below:

Name of entity	Summons Date	Acknowledgement	Additional Comments
Viraj Mercantile Pvt. Ltd.	01/08/2012	No	Summons returned undelivered



Viraj Mercantile Pvt. Ltd.	21/08/2012	Acknowledged vide its letter dated 21/09/2012	The entity vide letter dated 21/09/2012 sought extension of 10 days in submitting reply, however, no reply has been received from the entity.
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122. From the abovementioned table. I note that Summons dated 01/08/2012 was issued to Viraj to get information in connection with the transfer of Rs.5 crore with ATL. However, the same was returned undelivered with remarks not claimed. Accordingly, Summons dated 21/08/2012 was issued to Viraj through ATL. Viraj, vide its letter dated 21/09/2012 confirmed the receipt of SEBI's summons dated 21/08/2012 and inter-alia sought an extension of 10 days' time in submitting the requisite information. However, no reply was received from Viraj till the submission of the investigation report and also no reply to SCN has been made by Noticee no. 13 till the date of this order.

123. I note that the IA through Summons required the Noticee to *inter-alia* submit the following details/records/documents:

- i. Copy of Annual report, Balance sheet and the Profit & Loss statements of Viraj for the FY 2010-2011 AND 2011-12.
- ii. Copy of income tax returns of the Noticee for FY 2010-11
- iii. Details of all bank account maintained by Viraj during January 2011 to May 2011 and as on date of summon
- iv. Detailed Bank transaction statements of all bank account maintained by Viraj for the period from 01.01.2011 to 31.05.2011.
- v. Details of Monetary transactions between Viraj and ATL and also details of Monetary transactions between Viraj and certain entities mentioned in summon for the period 01.01.2011 to 31.03.2011
- vi. Money received/transferred by Viraj from/to abroad during January 2011 to May 2011
- vii. Details of all the inter corporate deposits given/taken by Viraj for the period 01.01.2011 to 31.03.2011
- viii. Details of any entity(Promoter/director/group/associates) connected to Viraj applied in IPO of ATL or traded in the scrip of ATL during March to may 2011

- ix. Any additional information/documents/records in connection with the details sought by SEBI from Noticees

124. Thus, in view of the above, I conclude that Viraj Mercantile Pvt. Ltd. failed to furnish the information called for through SEBI summons and therefore, has violated Section 11C(2) & 11C(3) of SEBI Act, 1992

Maars Software International Ltd

125. A brief summary of summons sent to and replies received from Noticee no. 14 is shown in table below:

Name of entity	Summons Date	Acknowledgement	Additional Comments
Maars Software International Ltd	01/08/2012	Acknowledged vide its letter dated 15/10/2012	The entity vide letter dated 15/10/2012 sought extension of 15 days in submitting reply, however, no reply was received from the entity.

126. From the above table, I note that, Summons dated 01/08/2012 and 21/09/2012, calling for information, were issued to Maars and its then directors through ATL (as the letters sent to Maars earlier were returned undelivered). Vide letter dated 15/10/2012, Maars confirmed the receipt of aforementioned 2 SEBI summons and requested 15 days time to submit the reply. However, no reply was received from Maars till the submission of the investigation report and also no reply to SCN has been made by Noticee no. 14 till the date of this order.

127. I note that the IA through Summons requiring the Noticee no. 14 to inter-alia submit the following details/records/documents:

- Copy of Annual report of Maars for the FY 2010-2011 AND 2011-12.
- Copy of income tax returns of the Noticee for FY 2010-11
- Details of all bank account maintained by Maars during January 2011 to May 2011 and as on date of summon



- iv. Bank transaction statements of all bank account maintained by Maars for the period from 01.01.2011 to 31.05.2011.
- v. Details of amount of Rs 40 crores received from ATL on 09.03.2011 by Maars
- vi. Details of any entity(Promoter/director/group/associates) connected to Maars applied in IPO of ATL or traded in the scrip of ATL during March to April 2011
- vii. Any additional information/documents/records in connection with the details sought by SEBI.

128. Thus, in view of the above, I conclude that Maars Software International Ltd. failed to furnish the information called for through SEBI summons and therefore, has violated Section 11C(2) & 11C(3) of SEBI Act, 1992

129. I find that the aforesaid summons issued to the respective Noticee no. 11 to 14 clearly stated that if the Noticee fails to comply with the summons, criminal prosecution may be launched against them under section 11C(6) of the SEBI Act which provides for a punishment with imprisonment for a term which may extend to one year or with fine which may extend to one crore rupees, or with both and also with a further fine which may extend to 5 lakh rupees for each day after the first, during which the failure or refusal continues. It was also stated that if they omits to produce the books of accounts and/or documents as required, SEBI will initiate adjudication proceedings against them under section 15 A of the SEBI Act.

130. I note that the allegation/observation made in the IR is that the Noticee no. 11 to 14 were also hand in glove with ATL and were party to the actions and deeds of ATL to divert the IPO money and not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL. the allegation is serious in nature and the above details/information sought by the IA from the Noticee no. 11 to 14 through the aforesaid summons was very relevant, which would have enabled the IA to draw precise conclusions w.r.t. the role of the Noticee no. 11 to 14 in the said matter. It is also on record that although the Noticee no. 11 to 14 received aforesaid summons but failed to submit the details/information/documents as sought by the IA or submitted incomplete details/information/documents sought by the IA in the matter.



131. Further, I also note that the information which was sought from the Noticee no. 11 to 14 through the aforementioned summons was very crucial and vital in respect of the investigation process. I do not find any reason for the Noticee no. 11 to 14 to hide this information unless some deceitful practices are being carried out by them in connivance with other entities associated with the irregularities as noted above in the IPO of ATL. The said information sought from the Noticee no. 11 to 14 vide aforementioned summons was very relevant and important in unearthing the truth in relation to punish all the entities who have played role in causing the irregularities observed in the IPO of ATL in order to protect the interest of the investors. The failure of the Noticee no. 11 to 14 to comply with the abovementioned summons issued by the IA has clearly hampered the investigation process.

132. In this context, I note that Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT'), in case of *Asian Films Production and Distribution Ltd. vs SEBI (Appeal No. 203 of 2010 decided on 19th January, 2011)*, has held that: *"Non-compliance with summons is, indeed, a serious matter and cannot be viewed lightly. The respondent Board is the market regulator and has to regulate the securities market and the law provides that every person associated with the market in any manner should cooperate in the matter of carrying out investigations. In the year 2002, the provisions of the Act were amended and penalty for non-compliance with summons was enhanced considerably to make it more deterrent. Market players who do not cooperate with the regulator in the matter of investigations commit a serious wrong which can have serious repercussions in the market. We do not know what would have come to light if the company had furnished the information sought from it."*

133. I also note that Hon'ble SAT, in its order dated October 22, 2013 in the matter of *Rich Capital & Financial Services Limited & Ans vs SEBI*, observed that:

"10. We may pertinently note that the SEBI is basically constituted to promote orderly and healthy growth of securities market apart from protecting investors' interest. For discharging this onerous job, and with a view to achieve the underlined object, SEBI as a regulator is required to conduct investigation and enquiries in the affairs of various parties from time to time. For this purpose, first and the foremost thing is co-operation from the concerned officers of the companies not only to



produce the relevant records as and when required by an investigating officer or enquiring authority or by any person authorised by the SEBI in this behalf but to appear in person as and when called upon. Section 11C (2) mandates every manager, managing director, officer or other employees of the company to preserve and produce such documents which are in their custody or power. Similar is the tone and texture of section 11C (3).

11. In case of failure on the part of the concerned person to furnish such records/information, heavy monetary penalty is prescribed in section 15A (a) of the SEBI Act, 1992. In fact such an act on the part of a company or its concerned officers is not only contemptuous but also a hindrance in the way of conducting smooth investigation and enquiry by the regulator to arrive at a just and fair conclusion as per the provisions of SEBI Act, 1992. Such an increasing tendency on the part of the companies needs to be curbed at the threshold.”

134. From the foregoing paragraphs, it is conclusively established that by failing to furnish information called for through SEBI summons under Section 11C(2) & 11C(3) of SEBI Act 1992, Noticee no. 11 to 14 viz. HDK International Pvt. Ltd., SK Universal Pvt. Ltd., Maars Software International Ltd. and Viraj Mercantile Pvt. Ltd., Noticee no. 11 to 14 has violated the provisions of sections 11 C (2) and 11 C (3) of the SEBI Act and are liable for monetary penalty under the provisions of Section 15A(a) of the SEBI Act

135. It is pertinent to refer the Hon'ble Supreme Court's Order dated April 26, 2013 in the matter of **N. Narayanan Vs. Adjudicating Officer, SEBI**, has laid down that “*Prevention of market abuse and preservation of market integrity is the hallmark of Securities Law. Section 12A read with Regulations 3 and 4 of the Regulations 2003 essentially intended to preserve ‘market integrity’ and to prevent ‘Market abuse’. The object of the SEBI Act is to protect the interest of investors in securities and to promote the development and to regulate the securities market, so as to promote orderly, healthy growth of securities market and to promote investors protection. Securities market is based on free and open access to information, the integrity of the market is predicated on the quality and the manner on which it is made available to market. ‘Market abuse’ impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and*



- c. Noticee no. 1 is liable for penalty u/s 23E of the SC (R) Act, 1956, for violation of Clause 43 and 43A(1) of the Listing Agreement by providing wrong quarterly disclosures to NSE & BSE regarding utilization of IPO proceeds.
- d. ATL provided wrong disclosure in the prospectus w.r.t. utilization of bridge loan, and not disclosed the related party transactions with Equastone Properties Pvt Ltd (a related entity of ATL). Hence, Noticee no. 1,2,5,6 and 7 are liable for penalty u/s 15 HA of the SEBI Act, for violation of provisions of Regulations 3 (b), (c), (d), 4(1), 4(2), (f), (k) & (r) of SEBI (PFUTP) Regulations, 2003 read with Section 12A (a), (b) and (c) of SEBI Act, 1992 and Regulation 57(1), 60(7)(a) of SEBI (ICDR) Regulations, 2009.
- e. Noticee no. 11 to 14 are liable for monetary penalty under the provisions of Section 15A(a) of the SEBI Act for violations of provisions of sections 11 C (2) and 11 C (3) of the SEBI Act.

138. The aforesaid penalty provisions are mentioned as under:

SEBI Act

Penalty for fraudulent and unfair trade practices

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(a) to furnish any document, return or report to the Board, fails to furnish the same he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less".

SCR Act, 1956



Penalty for failure to comply with provision of listing conditions or delisting Conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.*

139. While determining the quantum of penalty under Section 15A (a), Section 15 HA of the SEBI Act, and of Section 23E of the SCRA, the following factors stipulated in Section 15J of the SEBI Act and Section 23 J of the SCRA, have to be given due regard:

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.

140. The material on record does not bring out the quantum of disproportionate gain made by Noticees, or the amount of loss caused to other investors as a result of the violations committed. Further, I take note of the fact that on account of SEBI order dated September 27, 2019 passed in respect of the Noticees due to diversion of IPO proceeds and wrong disclosures/non-disclosure made in the prospectus, Noticees are/were, *inter alia*, undergoing periods of restraint from accessing the securities market. I also note that the diversion of IPO proceeds took place in 2011 and more than 11 years have lapsed since the impugned IPO.

141. However, the seriousness of the violations committed by the respective Noticees cannot be ignored, and in order that the Noticees do not escape from their legal obligations with impunity, as such fraudulent act do affect the fair functioning of the securities market and allow manipulators to take undue advantage at the cost of other innocent investors. Therefore, it is necessary that a justifiable penalty under the applicable provisions is required to be imposed for luring innocent investors into an IPO which was nothing but a pre-planned artifice for the reasons best known to them which are unexplained till date.



142. Having considered all the facts and circumstances of the case, violations established, and exercising the powers conferred upon me under section 15I of the SEBI Act and under section 23I of the SCRA, 1956 read with rule 5 of the SEBI Adjudication Rules, I hereby impose following penalties on following Noticees, which commensurate with the violations committed by these Noticees, respectively, in this case:

- a. ATL (Noticee no. 1), its Chairman & Managing Director, Shri Ravi Kumar Doraiswamy (Noticee no. 2) are liable for imposition of penalty of Rs. 10,00,000/- (Rs. Ten lakhs), payable jointly and severally, in terms of Section 15 HA of the SEBI Act for violation of provisions of Regulations 3 (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003 read with Sections 12A (a), (b) and (c) of SEBI Act, 1992.
- b. Shri Subrahmanya Dandala Kannayya Reddy (Noticee no. 4) being audit committee members of ATL for FY 2010-11 and 2011-12 is liable for imposition of penalty of Rs. 1,00,000/- (Rs. One lakh) payable individually in terms of Section 15 HA of the SEBI Act, for violation of provisions of Regulations 3 (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003 read with Sections 12A (a), (b) and (c) of SEBI Act, 1992.
- c. Shri Mohan Hosahally Ramakrishna (Noticee no. 3) being audit committee members of ATL for FY 2010-11 and 2011-12 is liable for imposition of penalty of Rs. 1,00,000/- (Rs. One lakh) payable individually in terms of Section 15 HA of the SEBI Act, for violation of provisions of Regulations 3 (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003 read with Sections 12A (a), (b) and (c) of SEBI Act, 1992.
- d. Noticee no. 8 to 18 are liable for imposition of penalty of Rs. 2,00,000/- (Rs. Two lakhs) each payable individually in terms of Section 15 HA of the SEBI Act, for violation of provisions of Regulations 3 (b), (c), (d) and 4(1) of SEBI (PFUTP) Regulations, 2003 read with Section 12A (a), (b) and (c) of SEBI Act, 1992 by acting hand-in glove with ATL and were party to the actions and deeds of ATL to divert the IPO money and not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.



- e. Noticee no. 1 is liable for imposition of monetary penalty of Rs. 2,00,000/- (Rs. Two lakhs) under Section 23E of the SC (R) Act, 1956, for violation of Clause 43 and 43A(1) of the Listing Agreement by providing wrong quarterly disclosures to NSE & BSE regarding utilization of IPO proceeds.
- f. Noticee no. 1 viz., ATL, its Chairman & Managing Director, Shri Ravi Kumar Doraiswamy (Noticee no. 2) are liable for imposition of penalty of Rs. 5,00,000/- (Rs Five lakhs), payable jointly and severally, in terms of Section 15 HA of the SEBI Act, for violation of provisions of Regulations 3 (b), (c), (d), 4(1), 4(2), (f), (k) & (r) of SEBI (PFUTP) Regulations, 2003 read with Section 12A (a), (b) and (c) of SEBI Act, 1992 and Regulation 57(1), 60(7)(a) of SEBI (ICDR) Regulations, 2009.
- g. Noticee no. 5,6 and 7 are liable for imposition of penalty of Rs. 2,00,000/- (Rs. Two lakhs) each payable individually in terms of Section 15 HA of the SEBI Act, for violation of provisions of Regulations 3 (b), (c), (d), 4(1), 4(2), (f), (k) & (r) of SEBI (PFUTP) Regulations, 2003 read with Section 12A (a), (b) and (c) of SEBI Act, 1992 and Regulation 57(1), 60(7)(a) of SEBI (ICDR) Regulations, 2009.
- h. Noticee no. 11 to 14 are liable for imposition of penalty of Rs. 1,00,000/- (Rs. One lakh) each payable individually in terms of Section 15A(a) of the SEBI Act for violations of provisions of sections 11 C (2) and 11 C (3) of the SEBI Act.

PENALTY PAYMENT OPTIONS

143. The amount of penalty(ies) 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.



144. 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-4), the Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

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

145. 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.

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

Date : March 31, 2022

Place : Mumbai



V.K. Verma
Vijayant Kumar Verma
Adjudicating Officer