**WTM/MPB/EFD-1-DRA-IV/67/2019**

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

**FINAL ORDER**

**Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of India Act, 1992**

**In Re: Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003**

**In the matter of Acropetal Technologies Limited**

**In respect of:**

| S.No. | Name of the Entity | PAN | DIN/ Address |
|---|---|---|---|
| 1. | Acropetal Technologies Ltd | AADCA1623M | - |
| 2. | Ravi Kumar Doraiswamy | ACNPK9304L | 01557904 |
| 3. | Ashok Kumar Gopal Rao Jultha | - | 02083433 |
| 4. | Mohan Hosahally Ramakrishna | AHQPR8898G | 02034857 |
| 5. | Ramdas Janardhana Kamath | AAEPK8776D | 00035386 |
| 6. | Subrahmanya Dandala Kannayya Reddy | AANPR6123L | 02862329 |
| 7. | Mathew James Manimala | ADMPM6782A | 02861283 |
| 8. | S. Sudheer | - | 2/10, 3rd floor, Ajay Plaza, 1st Main, N.S. Palya, Bannerghatta Road, Bangalore – 560 076 |
| 9. | Shobha Sudhakar Acharya | AJLPA3219K | - |
| 10. | Jamili Jalaiah | ACTPJ7423K | - |
| 11. | Interbrew Networks Ltd | - | Rakeen BLD, A1, Jazeera Al Hamra, P.O Box 34585, Ras Al Khaimah, UAE |

| | | | |
|---|---|---|---|
| 12. | Vision Info Inc | - | Vision Info Inc, UAE, Office No.204, Tower-A, Gulf Towers, Oud Metha, |
| 13. | Corus Limited | - | Corus Limited, P.O. Box No. 999, AL Mankhool Road, Dubai,UAE) |
| 14. | HDK International Pvt. Ltd. | AABCH7897J | - |
| 15. | SK Universal Pvt. Ltd. | AAKCS4399D | - |
| 16. | Viraj Mercantile Pvt. Ltd. | AADCV3852H | - |
| 17. | Maars Software International Ltd. | AAACM4527H | - |
| 18. | Aarm Finser India Limited | AABCP0367K | - |
| 19. | Ecologix Knowledge Solutions Pvt. Ltd. | AACCE0264H | - |
| 20. | Equastone Properties Pvt. Ltd. | AABCE9232C | - |
| 21. | Virtus Tech Pvt. Ltd. | AADCV2746E | - |

***BACKGROUND***

1. Acropetal Technologies Limited (hereinafter referred to as "**ATL / company**") is an engineering design services provider. The company was incorporated on April 25, 2001 and was converted into public limited company on March 10, 2011. The company came out with an Initial Public Offer (hereinafter referred to as "**IPO**") for issue of 1,88,88,889 equity shares of face value ₹10/- each at a price of ₹ 90 per share, aggregating to ₹ 170 crore during February, 2011. ATL was listed on both the exchanges, BSE Ltd. and NSE, on 10/03/2011. The scrip opened at ₹ 92/- and ₹ 130/- and touched a high of ₹ 140/- and ₹ 150/- on NSE and BSE Ltd. respectively.

2. The details of the management of the company were as follows:

| Sl. No. | Name | Designation |
|---|---|---|
| 1 | Mr. Ravi Kumar Doraiswamy | Chairman & Managing Director |

| | | |
|---|---|---|
| 2 | Mr. Ramdas Janardhana Kamath | Non-Executive & Independent Director |
| 3 | Dr. Subrahmanya Dandala Kannayya Reddy | Non-Executive & Independent Director |
| 4 | Dr. Mathew James Manimala | Non-Executive & Independent Director |
| 5 | Mr. Ashok Kumar Gopal Rao Jultha | Non-Executive & Non Independent Director |
| 6 | Mr. Mohan Hosahally Ramakrishna | Non-Executive & Independent Director |
| 7 | Ms. Shobha Sudhakar Acharya | Company Secretary |
| 8 | Mr. Jamili Jalaiah | Compliance Officer |
| 9 | Mr. S. Sudheer | Chief Financial Officer |

3. The shareholding pattern of the company before and after the IPO is given below:

| **Particulars** | **As on March 06, 2011 (Prior to IPO)** | | | **As on March 31, 2011** | | | **Q.E. June, 2011** | | |
|---|---|---|---|---|---|---|---|---|---|
| | **No. of share holders** | **No. of shares** | **% holding** | **No. of share holders** | **No. of shares** | **% holding** | **No. of share holders** | **No. of shares** | **% holding** |
| **Promoter & Promoter group** | 8 | 1,71,45,000 | 85.72 | 8 | 1,71,45,000 | 44.09 | 8 | 1,71,45,000 | 44.09 |
| **Public** | 93 | 28,55,000 | 14.28 | 12,209 | 2,17,45,358 | 55.91 | 15,643 | 2,17,45,358 | 55.91 |
| **Total Shareholding** | 101 | 2,00,00,000 | 100 | 12,217 | 3,88,90,358 | 100.0 | 15,651 | 3,88,90,358 | 100.0 |

4. It is observed from the financial result of the company that the net sales of the company increased from ₹ 141.65 crore for the year ended March 31, 2011 to ₹ 187.49 crore for the year ended March 31, 2012.

5. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") ~~*suo moto*~~ initiated an investigation in the matter of IPO of ATL to ascertain whether there were any violations of the provisions of Securities and Exchange Board of India Act, 1992 (herein after referred to as "**SEBI Act**"), SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (herein after referred to as "**ICDR**") and SEBI

(Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (herein after referred to as "**PFUTP Regulations**"). The period of investigation is taken as listing day of the scrip, March 10, 2011 (herein after referred to as "**Investigation Period**").

***SHOW CAUSE NOTICE***

6. Consequent to the completion of investigation, a common Show Cause Notice (hereinafter referred to as "**SCN**") dated August 10, 2017 was sent to ATL, Shri Ravi Kumar Doraiswamy, Shri Ashok Kumar Gopal Rao Jultha, Shri Mohan Hosahally Ramakrishna, Shri Ramdas Janardhana Kamath, Shri Subrahmanya Dandala Kannayya Reddy, Shri Mathew James Manimala, Shri S. Sudheer, Ms. Shobha Sudhakar Acharya, Shri Jamili Jalaiah, Interbrew Networks Ltd., Vision Info Inc., Corus Ltd., 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. in the extant matter to show cause as to why suitable actions/directions in terms of Sections 11 (1), 11(4) and 11B of the SEBI Act should not be initiated against them for the alleged violation of the provisions of Sections 12A (a), (b) and (c) of the SEBI Act and Regulations 3 (b), (c), (d) and 4(1) of the PFUTP Regulations by all the Noticees. It was further alleged that ATL, Shri Ravi Kumar Doraiswamy, Shri Ramdas Janardhana Kamath, Shri Subrahmanya Dandala Kannayya Reddy, Shri Mathew James Manimala, Shri Ashok Kumar Gopal Rao Jultha, Shri Mohan Hosahally Ramakrishna, Shri S. Sudheer, Shobha Sudhakar Acharya and Shri Jamili Jalaiah have violated the provisions of Regulations 3 (b), (c), (d), 4(1), 4(2) (f) and (k) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act, 1992 and Regulation 57(1), 60(7)(a) and Clause (2)(IX)(B)(12) (a)(v) Part A of Schedule VIII of ICDR Regulations.

7. The facts as set out in the SCN are as follows:

   7.1 The objects of issue as per ATL's Prospectus dated February 25, 2011 are stated in table below:

| Sr. No. | Particulars | Amount in ₹ lakh (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** |

7.2 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 February 14, 2013 *inter alia* submitted following details:

| Name of Acquired Company | Amount (approx. ₹ crore) | 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.

7.3 It is alleged in the SCN that as per the bank statements, submitted by ATL, it was observed that ATL paid approximately ₹ 4.10 crore only (₹ 3.10 crore to Shri Prabhakar Kini and ₹ 50.22 lakh each to Mr. Satish Kini and Ms. Vidya V Shanbhag during the period May 03, 2011 to May 07, 2011) to the shareholders of Kinfotech Pvt. Ltd. herein after referred to as "**Kinfotech**") to acquire 5,10,444 shares (around 51% shareholding) of Kinfotech as opposed to ₹ 5.10 crore submitted by ATL.

7.4 Vide its letter dated June 11, 2012, ATL had submitted that it had acquired

4,39,990 shares of Mindriver Information Technologies Pvt. Ltd. (herein after referred to as "**Mindriver**") from Shri K. Dhanasekharan and others (total eight shareholders of Mindriver) and paid ₹ 9,49,98,241/- towards the same. However, it is alleged in the SCN based on the bank statements of ATL and the confirmations received from majority shareholders of Mindriver and signatories of the share purchase agreement that ATL utilised approximately ₹ 9.42 crore to acquire shareholding of Mindriver.

7.5 Vide its letter dated June 11, 2012, ATL had submitted that it had acquired Line Beyond Inc and Optech Consulting Inc (based in U.S.A.) from M/s. Corus Limited, UAE. However, it is alleged in the SCN that ATL did not spend any amount from IPO proceeds to acquire Line Beyond Inc. and Optech Consulting Inc. as claimed by it.

7.6 Further, it is alleged that out of ₹ 55 crore earmarked for the object of "Proposed Acquisitions" as mentioned in the Prospectus, ATL had utilised only ₹ 13.52 crore (₹ 4.1 crore for Kinfotech and ₹ 9.42 crore for Mindriver) towards the stated object.

7.7 ATL, vide its letter dated June 11, 2012, *inter alia* submitted that it had utilized ₹ 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 June 30, 2011 w.r.t utilization of IPO proceeds and Annual Report for the year 2010 -11. On seeking clarification, ATL vide its letter dated July 17, 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 ₹ 5.74 crore was spend on account of hardware, software and related expenditure.

7.8 As regard to ₹ 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. In view of the same, it is alleged that out of ₹ 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.

7.9 ATL vide its letter dated June 11, 2012, *inter alia* submitted that an amount of ₹ 19.25 crore was utilised towards Expansion and Establishment of overseas offices. ATL was once again advised to provide complete details in this regard. ATL, vide its letter dated July 17, 2012 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 As regards details of payment towards setting up of offices abroad, ATL merely mentioned the following "*from ATL to Vision Info on 10/3/2011*" in its letter dated April 30, 2013. From the bank account statement of ATL, it was observed that an amount of ₹ 22.63 crore approximately (equivalent to US$ 50 lakh) was transferred to Vision on March 10, 2011, who in turn had transferred the same to Interbrew on March 13, 2011. However, during the course of investigation, it was found that ATL has not provided relevant and specific details to evidence that ₹ 22.63 crore transferred to Vision Info was utilized for "Expansion & Establishment of Overseas offices". Accordingly, it is alleged that out of ₹ 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.

7.10 On being advised to provide complete details on the part repayment of term loans along with supporting documents, ATL vide its letter dated February 14, 2013 submitted that ₹ 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, it was noted that it made part repayment of ₹ 19.35 crore only through monthly instalments paid during the period March 2011 to October 2012.

7.11 From the bank account statements submitted by ATL, it was observed that out of

aforementioned ₹ 19.35 crore, an amount of ₹ 1.67 crore was used from IPO proceeds towards payment of instalment for term loans (₹ 1.01 crore from State Bank of Travancore A/c Number 67042921027 on March 11, 2011 towards closure of term loan bearing loan a/c Number 67043345427 with State Bank of Travancore and ₹ 65 lakh from Axis Bank a/c 9010300011097 on March 09, 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 March 09, 2011 to March 18, 2011). In view of the same, it is alleged that out of ₹ 25 crore earmarked for the object of "Part Repayment of Term Loans" as mentioned in the prospectus, ATL utilised ₹ 1.67 crore towards the stated object.

7.12 ATL, vide letter dated June 11, 2012 submitted that as on March 31, 2012, an amount of ₹ 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 April 30, 2013 submitted that ₹ 40.90 crore was utilized towards working capital. Bank account statements of ATL were analysed and it was observed that from IPO proceeds, an amount of ₹ 87 lakh was utilized towards payment of salary,

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

7.14 ATL vide its letter dated June 11, 2012 submitted that it had spent ₹ 11.12 crore towards Public Issue Expenses and also submitted copies of invoices for an amount of ₹ 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 July 17, 2016 apart from aforementioned ₹ 5.86 crore, ATL has additionally submitted a debit note issued by Vision for an amount of US$ 5.5 lakh, without specifying the details of

expenditure involved. As Vision 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.

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

7.16 ATL, vide its letter dated June 11, 2012 submitted that an amount of ₹ 4.29 crore was spend towards General Corporate Purposes. As ATL did not provided any evidence to substantiate its claim that it had spent ₹ 4.36 crore from IPO proceeds for General Corporate Purpose, it is alleged that ATL has not utilised any amount towards the stated object of General Corporate Purpose.

7.17 From the Investigation Report (herein after referred to as "**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 (₹) | 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** |

7.18 From the above table, it is observed that out of ₹ 170 crore of IPO proceeds, the company had utilized only ₹ 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.

7.19 As per prospectus of ATL and Annual reports of ATL for FY 2010-11 and 2011-

12, Shri Ramdas Janardhana Kamath, Shri Subrahmanya Dandala Kannayya Reddy and Shri Mohan Hosahally Ramakrishna 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.

7.20 Shri Mohan Hosahally Ramakrishna being an Independent Director 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 Hosahally Ramakrishna made his partner to sign the papers relating to Corus Ltd. and Interbrew. In view of the same, conduct of Shri Mohan Hosahally Ramakrishna was contrary to what was expected of him as an Independent Director.

7.21 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.

7.22 The IR observes that ATL and its Chairman and Managing Director of ATL, Shri Ravi Kumar Doraiswamy (hereinafter referred to as "**Shri Ravikumar**") 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.

7.23 In view of above, it is alleged that ATL, its Chairman & Managing Director, Shri

Ravikumar 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 PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act by deviating from the objects of the issue and not utilising the IPO proceeds as per the objects stated in the prospectus.

7.24 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 ₹ 148.08 crore out of total IPO proceeds of ₹ 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:

7.25 ATL vide its letters dated June 11, 2012 and July 02, 2012 had indicated that amount of ₹ 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.

7.26 The IR after analyzing the documents submitted by the company and bank statements, observes that except ₹ 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 ₹ 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 which has resulted in alleged violation of Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

7.27 ATL vide its letter dated June 11, 2012 stated that the amount of ₹ 5.00 crore transferred on March 09, 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 July 17, 2012 claimed that consequent to a MoU for the development of software project, an amount of ₹ 5.00 crore was received on February 14, 2011 as Project Advance from Viraj and the amount of ₹ 5.00 crore transferred to Viraj on March 9, 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 a 'MoU for cancellation of the project.

7.28 After analyzing the MOU and bank statements, the IR noted that the amount of ₹ 5 crore that ATL received from Viraj on February 14, 2011 was 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 which has resulted in alleged violation of Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

7.29 Vision is a wholly owned subsidiary of ATL. ATL had transferred ₹ 22.63 crore to Vision, which in turn transferred the said funds to Interbrew, which is also indirectly controlled by Shri Ravikumar, Promoter and CMD of ATL. Hence, it is alleged that ATL had rather diverted the IPO money to the tune of ₹ 22.63 crore to its own related entity (i.e. Interbrew) through its wholly owned subsidiary (i.e. Vision).Therefore, it is alleged that Vision has violated Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

7.30 Interbrew is an entity managed and controlled by ATL itself. While ATL in its letter dated July 17, 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 and Interbrew in this regard. Hence, it is alleged that ₹ 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 ₹ 2.73 crore to its own related entity i.e. Interbrew. Therefore, it is alleged that Interbrew has violated Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

7.31 ATL was asked to provide complete details about the Datamatics Solutions Inc (hereinafter referred to as "**Datamatics**") and funds transferred to Datamatics along with the current status of transaction. ATL vide its letter dated May 13, 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 ₹ 7.62 to Datamatics which was not related to the objects of issue. Hence, it is alleged that Datamatics has violated Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

7.32 From the bank account of the ATL (A/c Number 9010300011097, Axis Bank), it was observed that there were transfer of ₹ 14.5 crore to HDK International Pvt. Ltd. (hereinafter referred to as "**HDK**") and ₹ 10.5 crore to SK Universal Pvt. Ltd. (hereinafter referred to as "**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.

7.33 ATL vide its letters dated June 11, 2012 and July 17, 2012 submitted that it had received project advances from HDK and SK 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'.

7.34 On analyzing the documents submitted at the time of investigation including bank statements and statement recording of Shri Ravikumar, 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 which has resulted in the alleged violations of Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

7.35 While ATL vide its letter dated June 11, 2012 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., however, as 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 ₹ 7.28 crore which were transferred to Corus Ltd. were not related to the objects of the issue, rather ATL diverted the IPO money to the tune of ₹ 7.28 crore to its related entity i.e. Corus Ltd. Therefore, it is alleged that Corus Ltd. has violated Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

7.36 It is further alleged based on the IR that out of the ₹ 10 crore which was kept as FD out of IPO proceeds, ₹ 9 crore was transferred abroad to various entities (by routing through ATL's related entities, namely Ecologix Knowledge Solutions Pvt Ltd (hereinafter referred to as "**Ecologix**") and Aarm Finser India Ltd. (hereinafter referred to as "**AFIL"**) and an amount of ₹ 1 crore (approximately) was utilized for paying the interest on loan taken by AFIL. Hence, the entire ₹ 10 crore which was kept as FD was not utilized for IPO objects. Therefore, it is alleged that AFIL and Ecologix (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 which has resulted in the alleged violation of Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

7.37 It is alleged that out of ₹ 10 crore which was kept as FD out of IPO proceeds, ₹ 7.64 crore was used for IPO objects (acquiring Mindriver) and an amount of ₹ 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).

7.38 It is also alleged that out of the ₹ 10 crore which was kept as FD out of IPO proceeds, ₹ 8.9 crore was diverted to entities abroad by routing through various related entities including Mindriver Systems India P Ltd, Binary Spectrum, Mayur Trading and Vandana Gems. Further, an amount of ₹ 1 crore was used for paying the interest on loan taken in the name of another related entity, Virtus Tech Pvt Ltd. (hereinafter referred to as "**Virtus**"). Hence, ₹ 10 crore which was kept as FD was not utilized for the objects of the IPO. 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 which has resulted in the alleged violation of Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

7.39 In the prospectus, it was disclosed that ATL has availed of a Bridge Loan facility of ₹ 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, ₹ 20 crore has been utilized till January 21, 2011 as under, as certified by the statutory auditor,:

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

7.40 The utilization of bridge loan as observed from the bank account statements and based on the details provided by United Bank of India is as follows:

| **Details** | **Amount** (₹ 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** |

7.41 From the documents collected during the course of investigation, it is noted that Equastone Properties Pvt. Ltd. (hereinafter referred to as "**Equastone**") is a related company of ATL / Shri Ravikumar. It is alleged based on the bank account statements of ATL, Equastone, Virtus and Ecologix that the loan of ₹ 9 crore taken by Ecologix on April 29, 2011 was repaid by funds which were transferred by ATL to Ecologix (₹ 9.36 crore approx. were transferred from ATL bank account to Ecologix account). Further, it is also alleged that out of ₹ 7.0 crore which was transferred by ATL to Equastone, ₹ 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).

7.42 Based on the above, it is alleged that ATL has not used ₹ 20.59 crore for the objects of IPO. Rather a major part of this ₹ 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 (who was a related entity of ATL) was also hand in glove ATL and was 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 which has resulted in the alleged violation of Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act.

7.43 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 ₹ 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) was ₹ 14.5 crore.
- Total amount diverted by ATL to its related / connected entities (including funds transferred to connected entities in abroad) was ₹ 82.59 crore.

- Total amount diverted by ATL to various entities who had traded in the scrip of ATL was ₹ 28.20 crore.
- Total amount diverted by ATL to other entities (including abroad entities) was ₹ 40.11 crore.

7.44 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. |

7.45 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 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.

7.46 It was disclosed in the Prospectus of ATL that it had taken a bridge loan of ₹ 20 crore, out of which ₹ 7 crore was used towards construction of building and

remaining, towards working capital. However, ATL, vide its letter dated May 02, 2016 had informed that said amount of ₹ 7 crore was transferred to Equastone as advance towards construction of software development center. ATL has further submitted that subsequently said project was cancelled and ATL received back the advance paid to Equastone. In this regard, it was observed that Equastone was a related entity of ATL / Shri Ravikumar. Further, from the bank account statements of ATL, it was observed that the remaining ₹13 crore was transferred abroad, for which no reason whatsoever could be provided by ATL. Hence, it is alleged that entire transaction was not genuine and disclosure as appearing in the Prospectus was false.

7.47 Equastone is a related entity of ATL / Shri Ravikumar as wife of Shri Ravikumar was the majority shareholder in Equastone and employees of ATL (viz. Shri Prashanth Kumar and Shri 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.

7.48 In view of above, it is alleged as follows:

- 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.
- Equastone, being a related entity of ATL, its financial transactions with ATL were not disclosed in the prospectus as per Clause (2)(IX)(B)(12) (a)(v) Part A of Schedule VIII of ICDR Regulations.
- Further, the aforementioned wrong disclosure leads to misleading information in the Prospectus.

7.49 Hence, it is alleged that ATL and the signatories to the Prospectus (viz. Shri Ravi Kumar Doraiswamy, Shri Ramdas Janardhana Kamath, Shri Subrahmanya Dandala Kannayya Reddy, Shri Mathew James Manimala, Shri Ashok Kumar Gopal Rao Jultha, Shri Mohan Hosahally Ramakrishna, Shri S. Sudheer, Shobha Sudhakar Acharya, Shri Jamili Jalaiah) have violated the provisions of Regulations

3 (b), (c), (d), 4(1), 4(2) (f) and (k) of PFUTP Regulations read with Sections 12A (a), (b) and (c) of SEBI Act and Regulation 57(1), 60(7)(a) and Clause (2)(IX)(B)(12) (a)(v) Part A of Schedule VIII of ICDR Regulations.

8. Based on the above, the Noticees were advised to show cause as to why suitable actions/directions in terms of Sections 11(1), 11(4) and 11B of SEBI Act should not be initiated against them for the alleged violation of the provisions of SEBI Act, PFUTP Regulations and ICDR Regulations.

***REPLY***

9. The SCN was served on all the entities through post / affixture except on Vision, Interbrew and Corus Ltd. (international Noticees).

10. In response to the SCN, ATL and Shri Ravikumar vide their letters dated September 4, 2017and Shri Mathew J. Manimala and Shri R.J. Kamath vide their letters dated September 5, 2017 requested for extension of time to submit a reply to the SCN. Vide letters dated September 13, 2017, the said Noticees were granted time till October 9, 2017 to submit a reply to the SCN.

11. On a request for extension of time to submit a reply to the SCN received from Shri Subrahmanya Reddy D K vide his letter dated September 5, 2017, he was informed vide a letter dated October 4, 2017 to submit a reply to the SCN on or before October 16, 2017. Similarly on receipt of a request for extension of time to submit a reply to the SCN received from HDK vide its letter dated September 7, 2017, HDK was informed vide an email dated September 14, 2017 to submit a reply to the SCN on or before October 10, 2017.

12. Ms. Shobha Acharya vide her email dated September 17, 2017 also requested for extension of time to submit a reply to the SCN. Vide an email dated October 4, 2017, she was advised to submit a reply to the SCN on or before October 23, 2017.

13. Shri Mohan H. Ramakrishna vide his email dated September 8, 2017 requested for extension of time to submit a reply to the SCN. His request was acceded to and vide an email dated September 9, 2017, he was advised to submit a reply to the SCN on or

before October 3, 2017. However, Keystone Partners, writing on behalf of Shri Mohan H. Ramakrishna vide their letter dated October 3, 2017 requested for time to submit the reply till October 20, 2017. The said request was also acceded to and the Noticee was advised to submit a reply to the SCN on or before October 20, 2017.

14. ATL again vide its letter dated September 29, 2017 requested for extension of time to submit a reply to the SCN a there were no employees in the company and ATL was totally dependent upon the consultants to submit a reply to the SCN. Considering the request of ATL, the company was granted time vide an email dated October 11, 2017 till November 13, 2017 to submit a reply to the SCN.

15. Shri Jamili Jalaiah vide his letter dated November 23, 2017 submitted as follows:

15.1. He was mainly involved in advising procedural aspects of the IPO.

15.2. He was not the authorized signatory for the cheques or other instruments of the company and the actual fund flow was not in his control.

15.3. Financial decisions was taken and implemented by someone else.

15.4. He rendered the service to the company as an employee of the company only.

16. Shri Mathew J. Manimala vide his letter dated October 7, 2017 submitted as follows:

16.1. He was a Professor at the Indian Institute of Management, Bangalore and has retired from the service on June 30, 2015. His area of expertise is in the field of Human Resource Management and organisational behaviour.

16.2. He was appointed as an Independent Director of ATL on February 1, 2010. During the year 2012-2013, he had received notices from regulatory authorities referring to lapses in adherence to compliance requirements by the company. Thereafter, he has submitted his resignation vide his letter dated December 9, 2013.

16.3. The alleged matters of fund transfers and matters related thereto were neither mentioned in the Notice / Agenda of Board Meetings nor transacted or discussed in any of the Board Meetings where he had attended.

16.4. He signed the Prospectus relying on the due diligence reports and various certifications carried out by the different professional experts in their respective fields who were involved in drafting the Prospectus.

17. Shri R.J. Kamath vide his email dated October 9, 2017 submitted as follows:

17.1. For health / family reasons, he had resigned from the Board of the company on September 20, 2013.

17.2. He was an Independent Director and had no knowledge of the workings of the company other than what was presented in the Board meetings.

17.3. The utilisation of the proceeds of the IPO was presented in the Board meetings. The same is published in the annual financial statements of the company. As he was an Independent Director, he did not have in depth knowledge of the workings of the company. The utilisation was ratified in the Shareholders meeting (AGM) of March 31, 2013. By then he had resigned from membership of the Board.

17.4. The valuation of business that was acquired was done by a reputed firm of Chartered Accountants. It was his suggestion to take the advice of a reputed valuer. Once again as he was an Independent Director with no technical knowledge, the suitability of the acquisition for the company was beyond him, including the valuation of the same.

18. Shri Mohan H. Ramakrishna vide his letter dated October 19, 2017 while denying the allegations levelled in the SCN *inter alia* submitted as follows:

18.1. He has completed his bachelors of business management from Mangalore University, Karnataka. He is in the business of assisting individuals in obtaining housing loans, since the year 2001. During the course of his business, he met Shri Ravikurnar Doraiswamy in the year 2001 and since then he has arranged housing / mortgage loans for Shri Ravikumar, around seven or eight times.

18.2. After knowing Shri Ravikumar for a few years, he approached him and requested him to become a Director in his company, despite the fact that he had no prior experience in the business or management in the field of business technology (in which the company operates). Relying on Shri Ravikumar's expertise in the matter and owing to the extent of his relationship with Shri Ravikumar, he convinced him to become a Director of the company. He was appointed as an Independent Director in the year 2006.

18.3. In 2010, Shri Ravikumar decided to list the company by coming out with an IPO and in this regard, he approached me, informed me of the planned IPO, and requested him to become an Independent Director in his company. In the first instance, he wanted to resign as a Director of the company while it remained an Unlisted Public Limited company but Shri Ravikumar represented that no liabilities would have to be borne by him nor will he have to sign off on any of the documents on behalf of the company. Again, as he had no prior experience or expertise in the field of business technology, management, accounting or finance, and owing to such inexperience, he whole heartedly relied solely on the representations of Shri Ravikumar in performing his functions. He attended his last board meeting of the company as an Independent Director on April 24, 2014 and resigned from his directorship by way of a letter dated May 14, 2014.

18.4. There was never any attempt made by the company to educate him on the board process, duties and responsibilities of the Independent Director and such other dos and don'ts even though he requested the management and compliance officers to educate him on such matters on several occasions. He has received no pecuniary interest or benefit from the company, except with respect to the sitting fee of Rupees Eighteen Thousand only that he received for attending the meetings of the Board of Directors of the company, a fact which has been disclosed to the SEBI several times. He has received no other monetary compensation for his role in the company and he has not participated in any

fraudulent activity, unjust enrichment or any action that constitutes embezzlement. He has fully cooperated with the investigation in the matter.

18.5. The business and the funds of the company were mainly managed by Shri Ravikumar (Managing Director of the company) and Shri Jamili Jalaiah (Chief Financial Officer of the company). All the financial planning including the company's entry into the financial markets by making an IPO, the quantum, the size of issue and details of prospectus were all micro managed by Shri Ravikumar and Shri Jamili Jalaiah, the lead managers to the IPO and few other senior professionals/ consultants, none of whom he had met or communicated with in any manner. The finance related matters were not discussed with him or in any meetings of the board or any committee in any manner. Further, he was asked to sign the attendance sheet of the minutes without having been given any idea about the transactions being discussed in the meetings and despite having asked them several times, they did not provide him with any information about the transactions that were taking place in the company.

18.6. As per his knowledge, Shri Ravikumar always consulted Shri Jamili Jalaiah, a qualified cost and management accountant. He has already submitted the `e-chat', exchanged between him and Shri Ravikumar, where Shri Ravikumar has acknowledged that he in no way was responsible for the allegations made by SEBI.

18.7. He has never been a signatory to any of the bank accounts maintained by the company at any point of time nor did he had any access to the bank statements/ transaction details. Hence, this further substantiates the fact that he was not involved in the banking/ financial transactions of the company.

18.8. While the published Annual Reports shows that he has attended some the Board Meetings and Audit Committee meetings of the company, let me assure you that there was never a structured meeting that took place but for the sake of compliance with applicable law, they showed the existence of such meetings

only on paper. While they did assemble in the name of the meeting, they had few points of discussion and usually these points were simple, general and non-controversial ones and such meetings terminated with a vote of thanks to the person chairing such meetings. As stated earlier, the financial matters, money transfers, or the numerous other discrepancies enumerated in the SCN, were never discussed with him nor in any of the Board or committee meetings. It is evident that the statutory auditors of the company are involved in the fraud of public money, as there was not even a single comment from the auditors in the statutory audit reports of the company since its listing.

18.9. It is a well established position in law that the Directors of a company may only be held to be liable for the actions of the company to the extent of such Director's involvement in the impugning act. He was never involved in the day to day affairs of the company and had no reason to believe the existence of any wrong doing by the company.

19. Ms. Sobha S. Acharya vide her letter dated October 20, 2017 while denying her role in the utilization of IPO proceeds *inter alia* submitted as follows:

19.1. She passed her Company Secretary final examination in August, 2008. She continues to be an Associate Member to this date. She had joined the company as Company Secretary on July 11, 2009. She was reporting to Shri Jamili Jalaiah, Vice President (Investment Strategies). She was relieved from the position of Company Secretary and re-designated Senior Manager - Corporate Affairs w.e.f. September 1, 2011. She had resigned from the services of the company on health grounds on February 16, 2012 and was ultimately relieved on March 16, 2012.

19.2. She was a very junior person in the hierarchy. She was reporting to the Compliance Officer Shri Jamili Jalaiah, internally designated as V P Investment Strategy who claimed to be a Company Secretary and a Cost Accountant.

19.3. Though she was designated as Company Secretary, her role was strictly restricted to providing available basic documents of the company for

ROC/Secretarial whenever required, which was strictly monitored/instructed by her reporting manager viz. V P Investment Strategy. In other words, the top management considered her too junior to involve her in the vital financial and key decision making matters and that she was entrusted to keep the secretarial records in retrievable position. It may be in the fitness of things to state here that though she was asked to sign the Prospectus. She was considered too junior to follow up with the office of Registrar of Companies (Karnataka) to get its clearance. Some senior PCS were engaged and entrusted with this work. Further, the draft Board resolutions relating to IPO came from the office of Kanga & Company, the legal advisors to the IPO. Hence, the dependency on her for even hard core Company Secretarial matters was minimal.

19.4. She has not attended any Board Meeting of the company nor has attended any meeting of the Audit Committee. Such meetings were usually dominated by the Managing Director of the company viz. Shri Ravikumar and the VP/ Compliance Officer Shri Jamili Jalaiah. The company was professionally supported by several senior professionals on various occasions. Some of them were big names to reckon with in the professional circles. She drew comfort from that fact and she believed that the compliance is in safe hands of the senior professionals.

19.5. The DRHP and the Prospectus was duly vetted by the Legal Advisors and the Lead

merchant bankers to the Issue who did several rounds of due-diligence. Further, the company had gotten the equity grading done by none other than ICRA. Kindly note that she was asked to sign the Prospectus and she did draw some strength of such big endorsements and the due-diligences and involvement of other senior professionals.

19.6. It may be kindly noted that she was never a signatory to any bank account. Being the junior most person in the entire lot, the banking transactions, the corporate strategy or logic behind the transfers were neither discussed with her, nor in any of the Board Meetings. Hence, in all fairness and in the interest of justice, she may

be permitted to say that she does not have any role whatsoever in the utilization of the IPO money, whether falsely diverted or not.

20. ATL vide its letter dated November 27, 2017 while stating that IPO proceeds have been properly utilised for stated objects of the issue *inter alia* submitted as follows;

20.1. SCN stands affected as the powers of SEBI to administer certain provisions of the Companies Act, 1956, were specified and enumerated in Section 55A of the erstwhile Companies Act, 1956 and these powers did not provide the power to impose penalty/issue directions on/to a Director of a company, or on a member of the Audit Committee constituted under Section 292A of the erstwhile Companies Act, 1956. Further, in terms of the explanation to Section 55A of the erstwhile Companies Act, 1956, all powers relating to all other matters, including the matters relating to Prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares shall be exercised by the Central Government, Tribunal, or the Registrar of Companies, as the case may be. The allegations in the SCN being that the company has not utilised the proceeds of the IPO towards the stated objects, it is submitted that this matter relates to the "Prospectus" in respect of which, only the Central Government, Tribunal, or the Registrar of Companies have jurisdiction. It is further submitted that the other allegations in the SCN are exclusively under the jurisdiction of the Ministry of Corporate Affairs. The SCN deserves to be dropped.

20.2. It is submitted that the revised utilisation of the 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 15.8.2012, 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.

20.3. The allegation in the SCN that an amount of ₹ 26.18 crore earmarked for the setting up of Software Development Centre and Corporate Office (as mentioned

in the Prospectus) had not been utilised would be contrary to records. It is 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 and an amount of ₹ 5.74 crore was finally utilised towards the said object, which was also communicated to the SEBI vide our letter dated February 14, 2013. It is evident from that the proceeds of the IPO have been properly utilised for the above object and all the concerned regulatory authorities were kept informed. In this regard we have utilized an amount of ₹ 1.59 crore towards office equipment - hardware and ₹ 3.51 crore towards office equipment - Software, thereby utilizing the amount of ₹ 5.74 crore out of the IPO proceeds towards the above object. A certificate from company's Statutory Auditors is submitted in support of the submission.

20.4. The allegation that out of ₹ 55 crore earmarked for the object of "Proposed Acquisitions" as mentioned in the Prospectus, only ₹ 13.52 crore was utilised is contrary to records. It is submitted that one of the objects of the IPO was to raise funds for proposed acquisitions which was a key component of company's strategy to grow through acquisitions and strategic partnerships. It was envisaged that the acquisitions will be made by acquisition of the equity of the target company, or in any other manner. Towards this, company had acquired Kinfotech (₹ 5.10 crore), Mindriver (₹ 9.50 crore), Line Beyond Inc. (₹ 22.29 crore) and Optech Consulting Inc. (₹ 26.78 crore). It is submitted that in terms of the revised utilisation of the IPO proceeds, an amount of ₹ 6367.27 lakh has been utilised towards the above object. A copy of share purchase agreement, bank account statements, share transfer forms, stamp duties paid, Form ODI filed with the AD, intimation of acquisition of companies made to BSE Ltd. and NSE together with a certificate from company's Statutory Auditors dated August

14, 2012 in respect of the utilisation of ₹ 63.67 crore towards the above object of the issue, is submitted to support the submission.

20.5. The allegation in the SCN that out of ₹19.45 crore earmarked for the object of "Expansion and Establishment of overseas offices" as mentioned in the Prospectus, no amount was utilised is contrary to books of accounts of the company. It is submitted that in terms of the revised utilisation of the IPO proceeds an amount of ₹ 19.29 crore has been utilised towards the above object. Further as already stated, the revised utilisation was approved by the Board of Directors of the company, at their meeting held on August 14, 2012. A turnkey service agreement entered between Interbrew and Vision and amount spent towards expansion and establishment of overseas offices together with a certificate from our Statutory Auditors in this connection is submitted herewith.

20.6. The allegation in the SCN that out of ₹ 25 crore earmarked for the object of "Part Repayment of Term Loans" as mentioned in the Prospectus, only ₹ 1.67 crore was utilised is contrary to the books of accounts of the company. It is submitted that in terms of the revised utilisation of the IPO proceeds an amount of ₹ 25 crore has been utilised. A statement showing the following details is enclosed:

- Bank name and A/c No.
- Loan sanction and date.
- Amount of loan outstanding after the IPO.
- Bank name and account number from where the outstanding amount of the loan was repaid.
- Date of repayment.
- Amount repaid, together with a certificate from our Statutory Auditor in support of the repayments made, out of the proceeds of the IPO.

20.7. The allegation in the SCN that out of ₹ 25 crore earmarked for the object of "Additional Long Term Working Capital Requirements" as mentioned in the Prospectus, only ₹ 87 lakh was utilised is contrary to books of accounts of the company. It is submitted that in terms of the revised utilisation of the IPO

proceeds an amount of ₹ 40.90 crore had been utilised towards the above object. A statement showing the details of the utilisation of ₹ 40.90 crore out of the IPO proceeds towards additional working capital requirements together with a certificate from our Statutory Auditor in support of the submission is enclosed with the reply.

20.8. The allegation in the SCN that out of ₹ 15 crore earmarked for the object of "Public Issue Expenses" as mentioned in the Prospectus, only ₹ 5.86 crore was utilised is contrary to books of accounts of the company. It is submitted that in terms of the revised utilisation of the IPO proceeds an amount of ₹ 11.12 crore had been utilised towards the above object. A statement showing the details of the utilisation of ₹ 11.12 crore out of the IPO proceeds towards public issue expenses together with a certificate from our Statutory Auditor in support of the submission is enclosed with the reply.

20.9. The allegation in the SCN that out of ₹ 4.36 crore earmarked for the object of general corporate purposes as mentioned in the Prospectus, nothing was utilised is contrary to books of accounts of the company. It is submitted that in terms of the revised utilisation of the IPO proceeds, an amount of ₹ 4.29 crore had been utilised towards the above object. A statement showing the details of the utilisation of ₹ 4.29 crore out of the IPO proceeds towards general corporate purposes together with a certificate from our Statutory Auditor in support of the submission is enclosed with the reply.

20.10. No wrong disclosure or misleading statement in the Prospectus was even made. It is submitted that the following statements have been made in the Prospectus:

(i) "*The fund requirement and deployment are based on internal management estimates*." (Section V-Objects of the Issue at page 62).

(ii) "*Our plans are, subject to a number of variables, including possible cost overruns; receipt of critical governmental approvals; and changes in management's views of the desirability of current plans, among others*": (Section V-Objects of the Issue at

page 62).

(iii) "*Our management, in response to the dynamic nature of the industry, will have the discretion to revise its business plan from time to time and consequently our funding requirement and deployment of funds may also change. This may also include rescheduling the proposed utilization of Issue Proceeds and increasing or decreasing expenditure for a particular object vis-a-vis the utilization of Issue Proceeds*." (Section V-Objects of the Issue at page 75).

(iv)"Future prospects:

*While the 2009 outlook for global technology related spending is affected by the recessionary environment* ..." (Page 113).

20.11. It is vehemently denied that the company had submitted wrong disclosures in the Prospectus "leading to misleading information in the Prospectus. It is submitted that the offer documents had been appraised by the Merchant Bankers to the issue, who have after an exhaustive appraisal of the documents, certified that the disclosures true, fair and adequate. It is submitted that when the offer documents have been appraised and certified by the Merchant Bankers, such appraisal and certification cannot be ignored and brushed away lightly.

20.12. No complaint by any investors of the company, that they have been prejudiced/misguided by any alleged non-disclosure / wrong disclosure/inadequate disclosure exists nor does the SCN bring on record any complaint by any investor of any fraud committed by the Company upon the investors. It is submitted that in the absence of any complaint by the investors as aforesaid and in view of the express approval of the shareholders to the revised utilisation of the proceeds of the issue, there is no warrant for invoking Section 11 of the SEBI Act, which is totally misconceived and legally untenable.

20.13. Section 12A (a),(b),(c) of the SEBI Act and Regulations 3(b),(c)(d), 4 (1) of the PFUTP Regulations cannot be invoked, since the company or its Promoters have not dealt in securities to attract this provision.

20.14. SCN does not bring out any instance whether the company has committed any of the acts described and specified in the aforesaid Regulations, which could be termed as a "fraud" within the meaning of the term in Regulation 2 (c) or “unfair trade practice".

20.15. It is submitted that the procedure for ordering an investigation laid down in Regulations 5, 9 and10 of the PFUTP Regulations read with Section 11C of the SEBI Act has not been followed.

20.16. The allegation of diversion of IPO funds through various entities is vehemently denied and has been made without any evidence whatsoever. It is submitted that amounts paid to the various entities specified in the SCN are towards normal operational business expenditure of the Company. Brief details of the business expenditure with all of the said entities is submitted with the reply.

21. Shri Ravi Kumar Doraiswamy and Shri Subrahmanya D.K. Reddy vide their letters dated November 27, 2017 while adopting the reply of ATL *inter alia* submitted as follows:

21.1. Company had appointed a Compliance Officer to ensure compliance with the requirements of the Listing Agreements and various applicable laws. In addition, the Statutory Auditors had in their Audit Reports reported on the working of the company. The Statutory Auditors also conducted a limited review of the unaudited financial statements of the company for various periods. It is submitted that these reports of the Statutory Auditors of the company have not indicted the company, nor pointed out any wrong doing, or any misdemeanor, or any contraventions of the listing agreement and applicable regulations/laws. The Secretarial Audits conducted annually, have also not pointed out any contraventions of the listing agreement and applicable regulations/laws, nor commented on the utilisation of the IPO proceeds. During their respective tenure as the Managing Director (Shri Ravi Kumar Doraiswamy) and Independent Director (Shri Subrahmanya D.K. Reddy) of the company, they have discharged their duties diligently and honestly. They have relied on the Compliance Officer,

Reports of the Statutory Auditors and the Secretarial Audits, which has led them to believe bona fide that there had been no contraventions of the Listing Agreement and applicable regulation and laws.

***HEARING***

22. Vide hearing notice dated October 10, 2018, Noticees namely ATL, Shri Ravikumar, Shri Mohan Hosahally Ramakrishna, Shri Ramdas Janardhana Kamath, Shri Subrahmanya Dandala Kannayya Reddy, Shri Mathew James Manimala, HDK and SK were granted an opportunity of hearing on November 6, 2018. Vide hearing notice dated October 16, 2018, Noticees namely Shri S. Sudheer, Shri Ashok Kumar Gopal Rao Jultha, Ecologix, AFIL, Equastone and Vitrus were granted an opportunity of hearing on November 13, 2018. Vide hearing Notice dated November 1, 2018, Ms. Shobha Sudhakar Acharya and Shri Jamili Jalaiah were granted an opportunity of hearing on November 13, 2018.

23. In response to the hearing notice, Shri Ramdas Janardhana Kamath, Shri Mathew James Manimala, HDK and SK had requested to adjourn the scheduled hearing on November 6, 2018. ATL, Shri Ravikumar, Shri Mohan Hosahally Ramakrishna and Shri Subrahmanya Dandala Kannayya Reddy failed to attend the hearing without giving any reason inspite of service of hearing notice. Therefore, hearing with respect to the said Noticees was concluded.

24. At the time of hearing on November 13, 2018 Shri Karthick Varadarajan appeared for the hearing as authorized representative of Ms. Shobha Sudhakar Acharya, (hereinafter referred to as '**AR**')and made inter alia, the following oral submissions:

24.1. The AR submitted that the entity joined the company in 2009 as a company secretary. She was a very junior person in the company's hierarchy and was reporting to the compliance officer Shri Jamili Jalaiah, internally designated as VP Investment Strategy who claimed to be a company secretary and a cost accountant. The entity's role in the company was strictly restricted to "intelligent record keeping" and providing available basic documents of the company for RoC / Secretarial, whenever it was required. The affairs of the company were

managed by senior professionals and the main Promoter of the company, Shri Ravikumar was very active.

24.2. The AR submitted that the entity has never attended any Board meeting of the company and is also not aware of the financial transactions of the company. She has been made a scape goat in the instant matter. She had signed the prospectus based on the endorsement and due diligence carried out by Legal Advisor and BRLM to the issue and based on the involvement of senior professionals. She was re-designated as Senior Manager – Corporate Affairs in September, 2011 and she had resigned from the company in February, 2012.

25. Shri KRCV Seshachalam appeared for the hearing as AR of Shri Ramdas Janardhana Kamath and Shri Mathew James Manimala, The AR submitted that Shri Ramdas Janardhana Kamath was the Independent Director and Ex. Chairman of Canara Bank and Andhra Bank. . The AR further submitted that there is no allegation in the show cause notice that Mr. Kamath was aware of the events as it unfolded post IPO of the company or was actively involved in it. He had no knowledge of the dealings of the company except what was put before the Audit Committee. Moreover, as a member of the Audit Committee, he will not be in a position to unearth facts as done by SEBI using his investigative powers. The AR submitted that Mr. Kamath was made to believe regarding the proper utilization of IPO proceeds based on the assurances of statutory auditor, CEO, CFO and company secretary of the company.

The AR submitted that dereliction of duty by Shri Ramdas Janardhana Kamath has not been established and even if the same is established, it cannot tantamount to fraud as defined under SEBI Act and PFUTP Regulations. To a question posed to the AR to show evidence with respect to due diligence carried out by Shri Ramdas Janardhana Kamath as a member of Audit Committee, the AR sought time to provide the same. The AR further submitted that the revised utilization of IPO proceeds was approved by the Board of Directors in August, 2012 and was also approved by the shareholders of the company at the AGM held in September, 2012.

With respect to misleading information in the prospectus, the AR submitted that Shri

Ramdas Janardhana Kamath and Shri Mathew James Manimala had no opportunity to know about the related party transaction. Further, non-disclosure of related party transaction in prospectus does not amount to fraud under securities laws.

The AR submitted that the allegations in the extant matter against his clients are technical in nature and does not amount to fraud. Therefore, directions under 11B are not attracted for such alleged violations.

26. It is noted from the records that hearing notices were served / affixed on the following Noticees namely Shri S. Sudheer, Shri Jamili Jalaiah, AFIL, Ecologix, Equastone and Virtus. The aforesaid Noticees failed to attend the scheduled hearing without providing any reason. In view of the same, the hearing with respect to the said Noticees was concluded. Mr. Ashok Kumar Gopal Rao Jultha had requested to adjourn the scheduled hearing.

27. Based on the adjournment requests of HDK International Pvt. Ltd., Shri Mohan Hosahally Ramakrishna, Shri Ashok Kumar Gopal Rao Jultha and SK Universal Pvt. Ltd., the Noticees were granted an opportunity of hearing on January 31, 2019. Further, it is noted from records that Shri Jamili Jalaiah vide his email dated November 23, 2018 had requested for an opportunity of hearing as he had received the hearing notice post the scheduled date of hearing due to change in his address. Shri Jamili Jalaiah was also granted an opportunity of hearing on January 31, 2019. However, vide his email dated January 1, 2019, Shri Jamili Jalaiah requested that hearing may be conducted on January 25, 2019. The request of Shri Jamili Jalaiah was acceded to.

28. On the day of scheduled hearing, Shri Jamili Jalaiah appeared in person. He submitted that he was a salaried employee of the company. With respect to the IPO, he stated that he was mainly involved in advising the procedural aspects of the IPO viz., liaison between Merchant Bankers / Lawyers and company etc. He was not an autrhorised signatory for cheques or any other financial instruments. Flow of funds in or out of the company was not within his knowledge. The Noticee was advised to submit the details of his employment with the company along with any additional

submissions on or before February 2, 2019.

29. On January 31, 2019, Shri Ashok Kumar Gopal Rao Jultha appeared personally for the hearing. He submitted that he was a Non-Executive and an Independent Director of the company. The Noticee was advised to submit the proof for the same. The Noticee submitted that in 2011 he was asked by Shri Ravikumar to join the company and pursuant to that, he joined the company. Shri Ravikumar had bought the company, Binary Spectrum, a healthcare technology company from the Noticee in 2006-2007 for US$ 2 million. Post-acquisition, Shri Ravikumar was owning 60% of Binary Spectrum and the entity was holding 17%. The entity continued to work in Binary Spectrum. The Noticee further submitted that he had attended 2-3 Board Meetings of ATL but he was not able to contribute much in the said meetings. During the time of IPO, Binary Spectrum was going through a rough patch, so the entity had to spend a lot of time looking after it which invariably required a lot of travelling. The Noticee resigned from ATL in August, 2012. The Noticee was given time to submit a reply in the matter till February 10, 2019.

30. Shri Geet Sikhar and Shri Chetan Shah appeared as ARs of HDK International Pvt. and SK Universal Pvt. Ltd. The ARs submitted that the Noticees are into diamond trading and gems and jewelleries business. The ARs further submitted that they had entered into a MoU with ATL which was signed by the Noticees for a custom built software. The payment for the same was done in tranches to ATL between February 10 - 23, 2011. Since the project fell through, the Noticees returned the MoU to ATL without retaining a copy of the same and the money was paid back to them by ATL. The ARs were advised to submit additional written submissions with respect to the contents of the MoU and the net worth of the Noticees within 10 days from the date of the hearing.

31. It is noted from records that hearing notices were served on the following Noticees by newspaper publication / through their Regulator: Viraj, Maars, Corus Ltd., Vision and Interbrew. However, the said Noticees failed to attend the scheduled hearing

without providing any reason. Further, no request for adjournment of the hearing was received by them. In view of the same, hearing with respect to them is concluded.

32. The AR of Shri Mohan H. Ramakrishna again requested to adjourn the scheduled hearing on January 31, 2019 on health grounds of the Advocate appearing for the hearing. The same was acceded to and the Noticee was granted an opportunity of hearing on February 21, 2019. On the day of the scheduled hearing, Shri Anil Shah appeared for the hearing on his behalf. The AR *inter alia* submitted as follows:

32.1. The Noticee was the Non-Executive Independent Director of the company and was not involved in the day to day affairs of the company.

32.2. The company was run by CMD and CFO the company.

32.3. The Noticee solely relied upon the representation made by Mr. Ravikumar.

32.4. The SCN is silent on the responsibilities and obligations of a Non-Executive Independent Director.

32.5. The SCN is also silent as to what was required from the Noticee in terms of the so called "duty" to review the utilization of IPO proceeds and appraising the Board about mis-utilisation of IPO proceeds.

The AR was advised to submit Noticee's DIR-11. The hearing in the matter was concluded.

***<u>POST HEARING SUBMMISIONS</u>***

33. Subsequent to the hearing, Shri Mohan H. Ramakrishna made additional submissions wherein he *inter alia* submitted as follows;

33.1. SCN having concluded that Shri Ravikumar, the Chairman and Managing Director of ATL had played a fraud and misled the investors, the SCN ought not to have proceeded against him at all. For this reason alone the SCN against him should be dropped.

33.2. 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. It is denied that he was in-charge or control of the day-to-day affairs of ATL and hence he can never be held responsible.

33.3. It is stated that the alleged violations were not committed with his consent/knowledge/connivance and that he was not negligent. Section 633(1) of the Companies Act, 1956 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. It is submitted that he was not aware of the day-to-day affairs of ATL.

34. Shri R.J. Kamath vide his letter dated December 18, 2018 made additional submissions as follows:

34.1. As an Audit Committee member he was not under any obligation to investigate the matter further than what was brought to his notice by the Auditors of the company, MD of the company and CFO of the company.

34.2. Independent Directors cannot be held liable for the wrong disclosures in the RHP. The entire process of RHP involves contribution by the Merchant Bankers, Auditors, Promoters, and internal professional KMPs of the company. As Independent Directors, it was not the duty of the Noticee to verify the veracity of any fact which was otherwise certified by the said professionals and securities market intermediaries.

35. HDK International Ltd. and SK Universal Pvt. Ltd. submitted similar replies vide their letters dated January 25, 2019. They denied the allegations levelled in the SCN and *inter alia* submitted as follows:

35.1. Companies were incorporated in the year 2006 and their principal business activity is import and export of diamond and dealing in local jewelry on local

basis. They are also engaged in trading of gems and jewelries as well as short term lending.

35.2. It is submitted that for growth purposes, they had planned for setting up new retail outlets/ stores. For this function, they were in need of a new ERP software which provided resource planning of inventory, accounting and personnel integrated under one software solution.

35.3. HDK had given a project advance of ₹ 14.5 crore and SK had given a project advance of ₹ 10.5 crore to ATL for the development of a suitable ERP software. The amount of ₹ 14.5 crore was paid in tranches during February 10, 2011 to February 23, 2011 by HDK. As the project experienced a glitch on the preliminary front, the same was cancelled and the whole amount was returned back to ATL. However, the entire transaction was governed by a MoU between ATL and them.

35.4. As soon as the project got cancelled, we handed over all the documents back to ATL including the MoU, hence, they were not able to provide the same to SEBI during the course of investigation.

35.5. The money was paid through banking channels and the same was received back through banking channels.

35.6. It is further submit that they have provided unsecured loans to few entities out of their own funds and deny that the funds received from ATL were transferred to these entities.

36. Subsequently HDK and SK made similar additional submissions vide their letters dated February 9, 2019 wherein they *inter alia* submitted as follows:

36.1. As regards the query that whether the ERP software was custom built or ready designed, the Noticees expressed their inability to give an appropriate response to the same since ATL would be in a better position to comment on that.

However, they had given specific requirements to ATL at that point in time and in view of the same, the ERP software would be custom made.

36.2. As regards the turnover of HDK for the year 2009-10, 2010-11 and 2011-12, it is submitted that the turnover of HDK for the period 2009-10, 2010-11 and 2011-12 was ₹ 213.1crore, ₹ 210.31 crore and ₹ 181.81 crore respectively. Similarly for SK Universal Pvt. Ltd., it was ₹ 163.58 crore, ₹ 188.39 crore and ₹ 167.7 crore respectively. In view of the same, the development of ERP software was an essential need to develop and expand their business.

36.3. As regards the name of entities to whom money was transferred after receipt of money from ATL, a list of transactions along with the nature of transaction after March 10, 2011 is annexed with the reply.

36.4. As regards the allegation that part of funds transferred by ATL to them were routed to entities trading in the scrip of ATL subsequent to listing, it is submitted that out of ₹ 14.5 crore and ₹ 10.5 crore provided by them to various entities in the form of loans and advances and for goods, only one of the entities namely Raj Real Estate & Finvest Private Limited has traded in the scrip of ATL. They had provided the funds to Real Estate & Finvest Private Limited in the form of loans and advances in their ordinary course of business and they do not have any control over the utilization of funds by Real Estate & Finvest Private Limited. Just because Real Estate & Finvest Private Limited has utilized the funds for dealing in the share of ATL, they cannot be held responsible for the same. Apart from above business transaction, they do not have any connection with Real Estate & Finvest Private Limited.

37. The AR of Shri Mohan H Ramakrishna vide their letters dated February 22, 2019 and February 25, 2019 submitted a copy of DIR-11 and the order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') in the matter of *Pritha Bag* vs. *SEBI* decided on February 14, 2017.

38. It is noted from records that Shri Jamili Jalaiah did not make any additional written

submissions post his hearing. Further, Shri Ashok Kumar Gopal Rao Jultha did not make any written submissions post his hearing.

***FINDINGS & CONSIDERATIONS***

39. I have perused the SCN, replies, oral submissions and other materials available on record. On perusal of the same, the following issues arise for consideration. Each issue is dealt with separately under different headings.

    (i) Whether ATL has deviated from the objects of the issue and has not utilized the IPO proceeds as per the objects as stated in the Prospectus?

    (ii) Whether wrong disclosure and / or non-disclosure has been made in the Prospectus?

    (iii) If answer to issue No. 1 is in affirmative, who all are liable for the same and whether they have violated the provisions of SEBI Act and PFUTP Regulations?

    (iv) If answer to issue No. 2 is in affirmative, who all are liable for the same and whether they have violated the provisions of SEBI Act, PFUTP Regulations and ICDR Regulations?

    (v) What directions, if any should be issued against the Noticees?

40. Before proceeding to deal with the above mentioned issues, I deem it necessary to deal at the outset, with the preliminary issues raised by ATL.

41. ATL has submitted that the extant matter relates to the "Prospectus" in respect of which, only the Central Government, Tribunal, or the Registrar of Companies have jurisdiction. Further, SEBI does not have the power to impose penalty/issue directions on/to a Director of a company, or on a member of the Audit Committee constituted under Section 292A of the erstwhile Companies Act, 1956. In this regard, I note that in terms of Section 55A of the Companies Act, 1956 the matters relating to disclosure in the RHP/Prospectus are to be administered by SEBI. Further, Section 11A of the SEBI Act specifically says that without prejudice to the provisions of the Companies Act, 1956, SEBI may by regulations specify *inter alia* the matters relating

to issue of capital and the manner in which those matters shall be disclosed by the companies. The ICDR Regulations are made by SEBI under Section 30 of the SEBI Act to carry out the purpose of the SEBI Act, particularly Section 11A thereof. The issue with regard to jurisdiction of SEBI in this regard has been settled by Hon'ble Supreme Court in the matter of *Sahara India Real Estate Corporation Limited & Ors. vs. SEBI [*2013(1) SCC 1] wherein the Hon'ble Apex Court observed as follows:

*"…Further, Section 60B(9) clearly indicates that upon closing of the offer of securities, a final 'prospectus' has to be filed in the case of listed company with SEBI and Registrar, hence the explanation to Section 55A can never be constructed or interpreted to mean that SEBI has no power in relation to the prospectus…"*

42. I, therefore, find that SEBI has jurisdiction to issue the SCN and inquire into the alleged violations as stated in the SCN. I note that the power to inquire into the alleged fraudulent and unfair trade practices in the securities market lies with SEBI under Section 11(2)(e) read with Section 12A of the SEBI Act and to that effect SEBI has the power to issue directions against the Directors / members of the Audit Committee.

43. The company has also submitted that the procedure for ordering an investigation laid down in Regulations 5, 9 and10 of the PFUTP Regulations read with Section 11C of the SEBI Act has not been followed. It is noted that the Investigating Authority in the extant matter has been appointed under Section 19 read with Sections 11 and 11C of SEBI Act which confers the power on the Board to appoint an Investigating Authority if the Board has reasonable grounds to believe that the transactions in securities are being dealt with in a manner detrimental to the investors or the securities market or any intermediary or any person associated with the securities market has violated any of the provisions of the SEBI Act or the rules or the regulations made or directions issued by the Board thereunder . Further, Regulations 5 of PFUTP Regulations states that the Investigating Authority has to report to the Board in the manner provided in Section 11C of the SEBI Act. Moreover, PFUTP Regulations have been framed under powers conferred under Section 30 of SEBI Act

and therefore, the procedural requirement of appointment of the Investigating Authority will also be met if the Investigating Authority has been appointed under SEBI Act. Thus, the submission of the company that procedure for ordering investigation has not been followed, is without any merit.

44. I, now proceed to address the primary issues involved in the matter.

***Issue No. 1*** - *Whether ATL has deviated from the objects of the issue and has not utilized the IPO proceeds as per the objects as stated in the Prospectus?*

45. I note that there are two ways to arrive at the finding whether the company has deviated from the objects of the issue. The first perspective is to analyse the utilization of money raised in the IPO as submitted by the company and the other perspective will be to observe the money trail from ATL's bank account to the bank accounts of various other Noticees.

***First Perspective***

46. It is noted from the Prospectus dated February 25, 2011 that the following were the objects of the issue:

| Sr. No. | Particulars | Amount (as per the prospectus) (₹ in lakh) |
|---|---|---|
| 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** |

*Proposed Acquisitions*

45. With respect to the proposed acquisitions, ATL during the course of the extant proceedings, vide its letter dated letter dated February 14, 2013 and November 27, 2017 *inter alia* submitted following details:

| Name of Acquired Company | Amount (₹ crore) |
|---|---|
| Kinfotech Pvt Ltd. | 5.10 |
| Mindriver Information technologies Pvt. Ltd . | 9.50 |
| Line Beyond Inc. | 22.29 |
| Optech Consulting Inc.* | 26.78 |
| **Total** | **63.67** |

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

46. ATL has submitted a copy of share purchase agreement, bank account statements, share transfer forms, stamp duties paid, Form ODI filed with the AD, intimation of acquisition of companies made to BSE Ltd. and NSE together with a certificate from company's Statutory Auditors dated August 14, 2012 in respect of the utilisation of ₹ 63.67 crore towards the above object of the issue.

47. With respect to the acquisition of Kinfotech, it is noted from the bank statement of ATL of United Bank of India that during the period May 03, 2011 to May 07, 2011 that ATL had paid ₹ 3.10 crore to Shri Prabhakar Kini and ₹ 50.22 lakh each to Shri Satish Kini and Ms. Vidya V Shanbhag. It is noted from the submissions of ATL that 2 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 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 ACL has been recorded on August 2, 2011. However, though ATL has submitted bank statements reflecting transfer of ₹ 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 ₹ 1 crore to Mr. M. Prabhakar Kini subsequent to money transfers made to him on May 4, 5 and 7, 2011.

48. In view of the above, in respect of finding as to whether said ₹ 1 crore was paid for acquisition of shares Kinfotech, no firm finding that ₹ 1 crore was paid for acquisition

of shares of Kinfotech can be given as conclusive proof of transfer of ₹ 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 the company in respect of the allegation of diversion IPO proceeds of said amount of ₹1 crore.

49. 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 ₹ 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, that the payments made to the shareholders of the Mindriver including the husband of one of the shareholders (Ms. Vaishali Bansal Prasad) namely Mr. Sanjay Prasad, totals ₹ 9,42,27,442/-. Moreover, the company itself has not shown the respective bank debits of ₹ 9.50 crore with their dates to substantiate its claim. Therefore, the submission of the company is not acceptable and it is concluded that ATL utilised approximately ₹ 9.42 crore to acquire the shareholding of Mindriver.

50. 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 ₹ 510.44 lakh and for acquisitions of 100% stake in Mindriver for ₹ 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.

51. With respect to the acquisition of Optech Consulting Inc., it is noted 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.

52. 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.

53. For the acquisition of Line Beyond Inc., the corresponding bank entries shown by the company are dated February 23, 2011 and March 16, 2011 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.

54. 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.

55. 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.

56. 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.

57. 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.

58. In view of the above, it can be held that the acquisitions of Line Beyond Inc. and Optech Consulting Inc. were not genuine. It can therefore be held that ATL did not spend any amount from IPO proceeds to make any genuine acquistions (Line Beyond

Inc. and Optech Consulting Inc.) as claimed by it.

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

*Setting up of Software Development Centre and Corporate Office*

60. 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 has just made a bald submission without any supporting evidence that the amount of ₹ 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 ₹ 5.74 crore for hardware, software and related expenditure.

61. In view of above, it is held that out of ₹ 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*

62. ATL has submitted that in terms of the revised utilisation of the IPO proceeds an amount of ₹ 19.29 crore has been utilised towards the stated object and has submitted a turnkey service agreement dated March 12, 2011 entered between Interbrew and Vision (wholly owned subsidiary of ATL) towards expansion and establishment of overseas offices. 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., 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 US$ 50 lakh was transferred to Vision by ATL on March 10,2011. Further, it is noted that out 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.

63. A second version of the company is that the said transfer to Vision was regarding "*Project Advance Returned*" which later on changed to as stated in its letter dated June 11, 2012 submitted at the time of investigation "*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 ₹ 22.63 crore to Vision as Vision had requested the same for its increased long term working capital requirement. Subsequently, as per the Noticee company, when Vision was ready to repay the loan amount, Vision was requested to pay the same to Interbrew towards setting of offices abroad.

64. 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 itself 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 per the statement of 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 Interbrew 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 Interbrew was managed /operated by Shri Ravikumar.

65. In view of the above contradictory stances of the company, 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 ₹ 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*

66. With respect to part payment of term loans, ATL has submitted that an amount of ₹ 25 crore has been utilised for the same. Company has submitted the details of the payment. In this regard, it is noted from the IR that during the course of investigation, ATL had submitted that it had made a payment of ₹ 19.5 crore towards term loans. On the analysis of bank statements, it was noted that an amount of ₹ 1.67 crore was used from IPO proceeds towards payment of instalment for term loans. The rest of the amount was paid in monthly instalments during the period March, 2011 to October, 2012. The IR observes that considering that the entire IPO proceeds were transferred to various entities within a period of 10 days from the receipt of IPO proceeds (March 9, 2011 to March 18, 2011), the instalments could not have been paid out of IPO proceeds. The finding of the IR and the submission of the company have been considered later in this order at paragraph 134.

*Additional Working Capital requirements*

67. ATL has submitted that an amount of ₹ 40 crore was utilised towards the stated purpose and has submitted the details of the utilisation for the same. In this regard, it is noted from the IR that on analysing the bank statements, it was observed that based on the description "Salary", ₹ 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 uilisation, it is not supported by any documentary evidence. For e.g., ATL has submitted that it has paid ₹ 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 ₹ 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.

68. In view of the above and considering documentary evidence is only available for the payment of ₹ 87 lakh, it is held that only ₹ 87 lakh out of ₹ 25 crore allocated for the aforesaid objective was utilised from the IPO proceeds.

*Public Issue Expenses*

69. ATL has submitted in the current proceedings that ₹ 11.12 crore has been utilised for the said objective and has submitted the details for the same. However, no documentary evidence substantiating its claim has been submitted by ATL. In this regard, it is noted that at the time of investigation, ATL has submitted invoices for an amount of ₹ 5.86 crore. Considering that the company has submitted invoices for the amount of approximately ₹ 6 crore, 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.

70. In view of the above it is held that out of ₹ 15 crore earmarked for the aforesaid object, ATL has utilised ₹ 5.86 crore for the same.

*General Corporate Purposes*

71. ATL has submitted that a sum of ₹ 4.29 crore was used towards General Corporate Purposes and has given the details for the same. 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 ₹ 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 ₹ 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.

72. In view of the above, it is held that the company has not utilised any amount towards the stated object of General Corporate Purpose.

73. It is noted from the submission of the company that it has submitted a certificate dated August 14, 2012 from its statutory auditor certifying the utilisation of IPO proceeds as per the stated object in the Prospectus. On a perusal of the said certificate, it is observed that the statutory auditor has stated that it has gone through the books of accounts and relevant documents before certifying. However, as seen during the course of this proceedings, the company has not been able to substantiate its claims with documentary evidence and wherever documentary evidence has been submitted by the company, same is either for partial utilisation of the allocated amount or the supporting documents are not adequate. So if adequate / proper documents were not submitted in the instant proceedings then it casts a shadow of doubt on the documents submitted by the company to the auditor. Further, the certificate is not accompanied by any description / details of work undertaken or kind of documents referred or any corresponding sample for the stated objects. In the circumstances of the case, the certificate without any reference to particulars of specific documents relied upon or sample documents attached with it, the same cannot advance the case of the Noticees as reliable piece of evidence.

74. Thus, based on the first perspective, following 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 at:

| S. No. | Particulars | Amount utilized as per ATL | | |
|---|---|---|---|---|
| | | As per Prospectus in ₹ crore | As per ATL in ₹ crore | Amount utilized by ATL for IPO objects in ₹ crore |
| 1 | Proposed Acquisitions | 55.00 | 63.67 | 14.52 |
| 2 | Setting up of Software development center & Corporate Office | 26.18 | 5.74 | - |
| 3 | Expansion and establishment of offices overseas | 19.45 | 19.29 | - |
| 4 | Part repayment of term loan | 25.00 | 25.00 | 1.67* |
| 5 | Additional working capital | 25.00 | 40.89 | 0.87 |
| 6 | Public Issue expenses | 15.00 | 11.12 | 5.86 |
| 7 | General Corporate Expenses | 4.36 | 4.29 | - |
| | **TOTAL** | **170.00** | **170.00** | **22.92** |

**refer paragraph 134*

75. From the above table, it is observed that out of ₹ 170 crore of IPO proceeds, the company had utilized only ₹ 22.92 crore towards the objects of the issue. Hence, it is concluded that ATL had deviated from the objects of the issue and has not utilized the IPO proceeds as per the objects as stated in the Prospectus to the extent it has not used the IPO proceeds. .

***Second Perspective***

*Maars Software International Ltd. - ₹ 40 crore*

76. The company has stated that it had outsourced product development to Maars pertaining to software solution for the retail industry and to that extent the company had transferred ₹ 40 crore to Maars. 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 the 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 ₹ 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 ₹ 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 ₹ 40 crore to Maars was not for execution of any project and the same was not genuine in nature.

77. It is noted from IR that out of ₹ 40 crore, ₹ 15 crore was transferred by Maars to five other entities through various entities. The IR has observed from the bank statement of Maars that an amount of ₹ 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 ₹ 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** | **1.00** |
| Transferred to group/associate entities | 6.19 |
| Others | 0.68 |
| **Total** | **18.00** |

78. 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 ₹ 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 ₹ 18 crore as mentioned in table above, an amount of ₹ 1.87 crore is concluded to be used by ATL for the stated objects of the issue. The remaining ₹ 38.13 crore were not used as per the objects of the issue.

79. It is further concluded based on the reason already explained that the transfer of ₹

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.

*Viraj Mercantile Pvt. Ltd. – ₹5 crore*

80. ATL has submitted that its transaction with Viraj Mercantile Pvt. Ltd. was for facilitation of infrastructure management with application software and hardware. It is noted from the Axis bank A/c Number 910020030165850 of Viraj Mercantile Pvt. Ltd. that ₹ 5 crore was credited from ATL on March 09, 2011 which is immediately on the receipt of IPO proceeds by ATL. 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.

81. During the course of investigation, ATL had submitted that amount of ₹ 5.00 crore transferred on March 09, 2011 to Viraj Mercantile Pvt Ltd., towards 'ICD paid'. Subsequently, ATL claimed that consequent to a MOU for the development of software project, an amount of ₹ 5 crore was received on February 14, 2011 as Project Advance from Viraj Mercantile Pvt. Ltd., and the amount of ₹ 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:

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

82. 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.

83. 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 ₹ 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.

84. 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 ₹ 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.

85. In view of the above it can be held that ₹ 5 crore was diverted by ATL and were not deployed for the stated objects of issue as disclosed in the Prospectus of ATL.

86. It is further concluded that 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.

*Vision Info Inc., Dubai – ₹ 22.63 crore*

87. An amount of ₹ 22.63 crore was transferred by ATL to Vision on March 10, 2011 which is immediately on the receipt of IPO proceeds by 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, it can be held that ₹ 22.63 crore which were subsequently transferred to Interbrew through Vision were not related to the objects of the issue. ATL has rather diverted the IPO money to the tune of ₹ 22.63 crore to its own related entity i.e. Interbrew through its wholly owned subsidiary i.e. Vision.

88. It is further concluded 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.

*Interbrew Networks Ltd., UAE (Interbrew) – ₹ 2.73 crore approximately*

89. It has already been concluded 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 ₹ 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 ₹ 2.73 crore to its own related entity i.e. Interbrew. It is also concluded that Interbrew 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.

90. It is further concluded 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.

*Datamatics Solutions Inc. - ₹ 7.62 crore*

91. 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. and 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, it is concluded that ATL has diverted ₹ 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.

*HDK International Pvt. Ltd. – ₹ 14.5 crore and SK Universal Pvt. Ltd. - ₹ 10.5 crore*

92. It is observed from the bank account of the ATL (A/c Number 9010300011097, Axis Bank Ltd.) that there were transfer of ₹ 14.5 crore to HDK and ₹ 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.

93. During the course of instant proceedings, ATL with respect to the fund transfers to the aforesaid two companies 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.

94. It is observed from the IR that at the time of investigation, the company had submitted that it had received project advances from HDK (₹ 14.5 crore) and SK (₹ 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**.** Submission on the same lines have also been made by HDK and SK in the instant proceedings.

95. 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. 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 ₹ 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, 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.

96. It is observed from the MoU submitted by ATL at the time of investigation that it is

deficient in the following manner:

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

97. 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.

98. 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. As noted from the submissions of HDK International Pvt. Ltd. and SK Universal Pvt. Ltd., the software was to provide for resource planning of inventory, accounting and personnel integrated under one software solution. It implies that the software has to be custom built by taking into account the specific requirements of the clients. Therefore, 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.

99. 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.

100. Shri Ravikumar had also stated that there was no written correspondence between ATL and HDK and SK. Shri Sunil Jeetmal Kothari, Director of HDK and SK in his statement dated February 05, 2016 had corroborated the statement of Shri Ravikumar that there was no written correspondence between ATL and HDK and SK.

He further stated that neither he nor anybody else from HDK and SK had signed any MoU with ATL. This further questions the 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.

101. Without prejudice, to the aforesaid findings, it is noted that 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 ₹ 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.

102. The IR further observes that after ATL received ₹ 25 crore from and SK, 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 to various market entities who have traded in the scrip of ATL after listing. In this regard, 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.

103. In view of the above, it is concluded that ATL has diverted ₹ 25 crore by transferring it to HDK and SK, which was not related to the objects of the issue. It is further concluded that to 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.

*Corus Ltd. – ₹7.28 crore*

104. 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. It has already been held in preceding paragraphs that acquisitions of Line Beyond Inc. and Optech Consulting Inc. were not genuine. In view of the same, it is concluded that ATL has diverted ₹ 7.28 crore transferred to Corus Ltd. on March 15, 2011 and the same was not related to the objects of the issue.

105. 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. It is further concluded 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.

*ATLs Fixed Deposits / Bridge Loan*

106. It is noted from the bank account statements of ATL maintained with United Bank of India and State Bank of Travancore that out of IPO proceeds, a sum of ₹ 30 crore (10+ 10+ 10 crore) were used for opening Fixed Deposits (hereinafter referred to as '**FD**') and ₹ 20.59 crore were used for settlement of Loan account.

Fixed Deposit with United Bank of India (Account Number - 0884109015449) (₹ 10 crore):-

107. On March 10, 2011 (immediately after receipt of IPO proceeds), FD A/c Number 0884109015449 of ₹ 10 crore was opened for period of 91 days. This FD was marked as lien for the loan of ₹ 9 crore availed by 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 ₹ 10.57 crore approximately (₹ 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 ₹ 9.89 crore approximately (₹ 9,89,46,553) was utilized on February 3, 2012 to settle the Loan A/c Number 0884300026965 of AFIL.

108. It was observed that the said Loan A/c Number 0884300026965 related to the loan of ₹ 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 ₹ 9.00 crore (Loan A/c Number 0884050109079) availed on April 27, 2011. It was observed that said ₹ 9.00 crore availed as loan was transferred by AFIL to Ecologix, a company promoted by Shri Ravikumar (as per Prospectus of ATL) and in which he was also a Director.

109. It was observed that Ecologix had utilized this amount to settle an outstanding Loan (Loan of ₹ 9.00 crore, availed by it on 11/03/2011 - Loan A/c Number 0884300026521). The said loan of ₹ 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 (₹ 6.00 crore and ₹ 3.00 crore respectively) from where the funds were ultimately transferred to entities abroad (viz., Kumkum Trading, Oracle Imports, Uniglobe Trading, Shankeshwar Diamonds).

110. In a nutshell, 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.

111. ATL has submitted that its transaction with AFIL was for development of

"Hospital Information Management System" in an ERP suite of software modules for computerization of large scale hospital and its transaction with Ecologix was for development of Operations Research based Proprietary Software Tools for energy and emissions management. In this regard, it is noted that no documentary evidence has been submitted by the company to substantiate its claim including agreement, correspondences, particulars of the work involved, status of the projects etc. Further, 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. In view of the same, bald submissions of ATL are devoid of any merit. It is therefore concluded that out of the ₹ 10 crore which was kept as FD out of IPO proceeds, ₹ 9 crore were in effect, transferred abroad to various entities (by routing through ATL's related entities) and an amount of ₹ 1 crore (approximately) was utilized for paying the interest on loan taken by AFIL. Hence, the entire ₹ 10 crore which were kept as FD were not utilized for IPO objects.

112. It is further 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.

<u>Second Fixed Deposit with United Bank of India (Account Number) - 0884109015458 (₹ 10 crore)</u>

113. On March 10, 2011 (immediately after receipt of IPO proceeds), FD A/c Number 0884109015458 of ₹ 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 ₹ 50.00 lakh and 10 for ₹ 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 ₹ 10.20 crore was transferred to Ecologix's United Bank of India A/c Number 0884050108676.

114. Of these, on February 2, 2012, ₹ 9.88 crore approximately were utilized to settle United Bank of India Loan A/c Number 0884300026974 of Ecologix (₹ 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:

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

115. In a nutshell, from the IPO proceeds of ₹ 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, ₹ 7.64 crore was used for IPO objects (acquiring Mindriver) and an amount of ₹ 2.36 crore was diverted for some other purpose not related to the objects of the issue.

<u>Third Fixed Deposit with United Bank of India (Account Number) - 0499100453561 (₹ 10 crore)</u>

116. On March 11, 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 ₹ 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 ₹ 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 (₹ 10.00 crore).

On same day, ₹ 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 (₹ 9.64 crore). The loan taken on September 28, 2011 was indicated to have been availed to settle earlier loan of ₹ 9.00 crore taken on April 21, 2011 (Loan A/c Number 0499300147088).

117. The loan of ₹ 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 ₹ 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 (₹ 9.12 crore approximately) which it had availed on March 11, 2011 (Loan Amount being ₹ 9.00 crore). As per the information provided by the United Bank of India, the said amount of ₹ 9.00 crore was credited to Mindriver Systems India P. Ltd. UBI A/c Number 0499050149440 from where an amount of ₹ 5.00 crore was transferred to an entity namely Mayur Trading Co. (Axis Bank account N.9002003787) and ₹ 3.90 crore were transferred on to Binary Spectrum (subsidiary of ATL) on March 12, 2011 and March 17, 2011 respectively and ₹ 6.5 lakh were withdrawn in cash on March 17, 2011. The amount transferred to Binary Spectrum was further transferred abroad. From Mayur trading, ₹ 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.

118. It is noted from the IR that Virtus Tech Pvt. Ltd. itself was formed with the mutual understanding of Shri Ravikumar, Shri Rahuldev A Holla and Shri Ramesh Shetty (Directors of Virtus Tech Pvt. Ltd.), consequent to an MoU dated December 11, 2009 and even the shareholding to the extent of 80% was sold by the said Directors of Virtus Tech Pvt. Ltd. to Shri Anil Kumar P, at the consent of Shri Ravikumar. 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. In view of aforesaid, it is observed that the account of Virtus Tech Pvt. Ltd. was managed by ATL.

119. In view of above, it is concluded that out of the ₹ 10 crore which was kept as FD out of IPO proceeds, ₹ 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 ₹ 1 crore was used for paying the interest on loan taken in the name of Virtus Tech Pvt. Ltd. Hence, ₹ 10 crore which were kept as FD were not utilized for the objects of the IPO.

120. It is further concluded 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.

<u>United Bank of India Loan Repayment- ₹ 20.59 crore</u>

121. On March 10, 2011 (immediately after receipt of IPO proceeds), an amount of ₹ 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 ₹ 20.59 crore approximately was transferred on March 10, 2011 for term loan repayment.

122. It is noted from the Prospectus that it was disclosed that ATL has availed of a Bridge Loan facility of ₹ 20 crore from United Bank of India for meeting expenses forming part of the objects of the issue. The Bridge Loan was sanctioned by United Bank of India 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, ₹ 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:

- Advance towards construction of building: ₹ 7.00 crore

- Working capital: ₹ 13.00 crore

123. Based on the bank account statements and the details provided by United Bank of India, the IR observes that the bridge loan was utilised as follows:

| **Details** | **Amount** (₹ 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** |

124. 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, the aforesaid leaves no room for doubt that Equastone is a related company of ATL / Shri Ravikumar.

125. With regards to transfer of funds to Equastone, ATL has stated that the advance amount 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 ₹ 6.99 crore to ATL in 2 tranches of ₹ 3 crore on April 06, 2011 and ₹ 3.99 crore on April 29, 2011. From the bank account statement of ATL, Equastone, Virtus and Ecologix, following is observed:

- On April 06, 2011, Equastone transferred ₹ 3 crore to ATL. On the same day, Equastone received ₹ 3 crore from Virtus and Virtus received ₹ 6.1 crore from ATL on April 06, 2011.
- On April 29, 2011, Equastone transferred ₹ 3.99 crore to ATL. On the same day, Equastone received ₹ 5.34 crore (approximately) from Ecologix. Further, Ecologix availed a loan of ₹ 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).

126. 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 ₹ 7 crore which was transferred by ATL to Equastone, ₹ 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.

127. 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 this proceedings.

128. In view of the above, it is concluded that ATL has not used ₹ 20.59 crore for the objects of IPO. Rather a major part of this ₹ 20.59 crore was diverted by ATL to various entities abroad which was not part of objects of the issue.

129. 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.

130. In light of the above findings, even from the second perspective, it is concluded based on the bank statements that out of ₹ 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 ₹ 14.5 crore.
- Total amount diverted by ATL to its related / connected entities (including funds transferred to connected entities abroad) is ₹ 82.59 crore.
- Total amount diverted by ATL to various entities who had traded in the scrip of ATL is ₹ 28.20 crore.
- Total amount diverted by ATL to other entities (including entities abroad) is ₹ 40.11 crore.

131. Thus, 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 other than the stated objects of the issue.

132. It is noted from the IR that an amount of ₹ 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 ₹) | **Bank wise** (Amount ₹) |
|---|---|---|---|---|---|
| 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** |

133. From the findings based on second perspective, 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 conduits / methods:

| 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 |

134. Here, I would like to revisit the submission of the company on 'Part Repayment of Term Loans' wherein the company has submitted that it had made a payment of ₹ 19.5 crore towards term loans. On the analysis of bank statements, it was noted that an amount of ₹ 1.67 crore was used from IPO proceeds towards payment of instalment for term loans. The rest of the amount was paid in monthly instalments during the period March, 2011 to October, 2012. From the above table, it can be seen that the majority of the IPO proceeds (approximately ₹ 150 crore) were diverted within a span of 10 days of being credited to ATL's account and ₹ 14.5 crore was utilised for other stated objects of the issue, then the same cannot be used to pay monthly installments during the period March 2011 to October 2012. Thus, it is concluded that out of ₹ 25 crore earmarked for the object of "Part Repayment of Term Loans" as mentioned in the Prospectus, based on first perspective, ATL has utilised ₹ 1.67 crore towards the stated object.

135. 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, it is noted 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. 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. 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.* Therefore, in view of the aforesaid findings and given the facts and circumstances of the case, the submission of the company is not acceptable. Moreover, the diversion of IPO funds have already been concluded as "fraud" within the meaning of FUTP Regulations. 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.

136. It is noted that based on first perspective which is analysing the reply of the company in reference to utilisation of IPO proceeds only an amount of ₹ 22.92 crore out of ₹ 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 ₹ 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. In view of the same, considering the first perspective is based on the company's explanations to the utilisation of IPO proceeds, it is held that out of the IPO proceeds of ₹ 170 crore, an amount of ₹ 22.92 crore was utilised for the objects of the issue and the rest was diverted by the company.

***Issue No. 2*** - *Whether wrong disclosure and non-disclosure, has been made in the Prospectus?*

137. It was disclosed in the Prospectus that ATL had taken a bridge loan of ₹ 20 crore, out of which ₹ 7 crore was used towards construction of building and remaining, towards Working Capital. However, in the preceding paragraphs, it has already been held that the transfer of funds to Equastone, a related party of ATL was not genuine.

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

138. Moreover, Equastone is a related entity of ATL / Shri Ravikumar as wife of Shri Ravikumar 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.

***Issue No. 3 -*** *If answer to issue Nos. 1 and 2 is in affirmative, who all are liable for the same and whether the Noticees have violated the provisions of SEBI Act, PFUTP Regulations and ICDR Regulations?*

139. There are two parts to the issue. First, is with respect to the liability for diversion of IPO proceeds and the resultant violation of relevant rules and regulations. The second is liability for wrong disclosure and non-disclosure made in the Prospectus and the resultant violation of relevant rules and regulations. Before proceeding further, relevant provisions of SEBI Act and PFUTP Regulations are reproduced below:-

**SEBI Act**

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

**Section 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**

**Regulation 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

**Regulation 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.

140. Further, 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

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;

<u>*Diversion of IPO proceeds*</u>

**Liability of ATL:**

141. It has already been held in preceding paragraphs that proceeds of the IPO were diverted and were not utilized for the stated objects of the Issue as mentioned in the Prospectus. "Person" as defined under Section 3(42) of General Clauses Act, 1897 includes "*any company or association or body of individuals, whether incorporated or not*". Thus, person as mentioned under Regulations 3 and 4 of PFUTP Regulations will cover within its ambit, a company also.

142. Here, I would like to refer to the matter of *SEBI* vs*. Kanaiyalal Baldev Bhai Patel* (2018) 13 SCC 753 which dealt with the definition of "fraud" as given under Regulation 2(1) (c) of PFUTP Regulations. Two Hon'ble Judges of Hon'ble Supreme Court of India, in their separate but concurring judgments in the matter of *SEBI* vs*. Kanaiyalal Baldev Bhai Patel* (2018) 13 SCC 753 dealt with the definition of "fraud" as given under Regulation 2(1) (c) of PFUTP Regulations, 2003 and held as under:

*Per Hon'ble Justice N. V. Ramanna - "...26. There is no dispute as to the fact that fraud is jurisprudentially very difficult to define or cloth it with particular ingredients. A generalized meaning may be difficult to be attributed, as human ingenuity would invent ways to bypass such behaviour. It is to be noted that fraud is extensively used in various regulatory framework which mandates me to take notice of the conceptual and definitional problem it brings along. Fraud is among the most serious, costly, stigmatizing, and punitive forms of liability imposed in modern corporations and financial markets. Usually, the antifraud provisions of the security laws are not coextensive with common-law doctrines of fraud as common-law fraud doctrines are too restrictive to deal with the complexities involved in the security market, which is*

*also portrayed by the changes brought in through the 2003 regulation to the 1995 regulation.*

*27. On a comparative analysis of the definition of "fraud" as existing in the 1995 regulation and the subsequent amendments in the 2003 regulations, it can be seen that the original definition of "fraud" under the FUTP regulation, 1995 adopts the definition of "fraud" from the Indian Contract Act, 1872 whereas the subsequent definition in the 2003 regulation is a variation of the same and does not adopt the strict definition of "fraud" as present under the Indian Contract Act. It includes many situations which may not be a "fraud" under the Contract Act or the 1995 regulation, but nevertheless amounts to a "fraud" under the 2003 regulation.*

*28. The definition of 'fraud' under clause (c) of regulation 2 has two parts; first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of the term "fraud"..."*

*Per Hon'ble Justice Ranjan Gogoi – "...5. If Regulation 2(c) of the 2003 was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities.*

*6. <u>The definition of 'fraud', which is an inclusive definition and, therefore, has to be understood to be broad and expansive, contemplates even an action or omission, as may be committed, even without any deceit if such act or omission has the effect of inducing another person to deal in securities. Certainly, the definition expands beyond what can be normally understood to be a 'fraudulent act' or a conduct amounting to 'fraud'. The emphasis is on the act of inducement and the scrutiny must, therefore, be on the meaning that must be attributed to the word "induce"</u>..." (*Emphasis supplied*)*

143. The examination of the definition of fraud under the PFUTP Regulations envisages among other things fraud by way of "act" so as to have an "effect of inducement" on another person for dealing in securities. Further, Regulation 3 (c) of PFUTP Regulations prohibits employment of any device, scheme or artifice for fraud. In the given situation, the company came out with an IPO and stated unambiguously in its Prospectus, the purpose for which the money was being raised from the public. As discussed in preceding paragraphs, the company within 10 days of receiving the IPO proceeds had diverted the said money for purposes otherwise stated in the Prospectus. It goes without saying, if not for stated objects in the Prospectus, the investors would not have been induced to invest their money in the company's IPO. Thus, the company by diverting the IPO proceeds has played fraud on the innocent investors who were induced to invest in its securities and post listing continued to hold / buy the securities of the company in the belief that funds would be deployed in line with the Prospectus.

144. Regulation 4(1) of PFUTP Regulations refers to unfair trade practices in securities. It would be noteworthy to quote the observations of Hon'ble Supreme Court of India in the matter of Securities and Exchange Board of India and Ors. vs. Shri Kanaiyalal Baldevbhai Patel and Ors. (2017 SCC Online SC 1148) wherein it was *observed as follows:*

*"…Although unfair trade practice has not been defined under the regulation, various other legislations in India have defined the concept of unfair trade practice in different contexts. A clear cut generalized definition of the 'unfair trade practice' may not be possible to be culled out from the aforesaid definitions. Broadly trade practice is unfair if the conduct undermines the ethical standards and good faith dealings between parties engaged in business transactions. It is to be noted that unfair trade practices are not subject to a single definition; rather it requires adjudication on case to case basis. Whether an act or practice is unfair is to be determined by all the facts and circumstances surrounding the transaction. In the context of this regulation a trade practice may be unfair, if the conduct undermines the good faith dealings involved in*

*the transaction. Moreover the concept of 'unfairness' appears to be broader than and includes the concept of 'deception' or 'fraud'. "*

145. In the extant matter, considering 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.

146. Based on the aforesaid discussions, it is concluded that 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.

**Liability of Chairman and Managing Director**

147. I note from the Prospectus that Shri Ravikumar, was the Chairman and Managing Director of the company at the time IPO. The said fact is also not disputed by him. 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 the Managing Director is in overall charge of the business of the company. The Hon'ble High Court observed as follows: "*It is not disputed that the accused No. 2 is the Managing Director and is in overall charge of the Company*." Managing Director of the company 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 employess 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. Therefore, his submission that he had relied upon the Compliance Officer, reports of Statutory Auditors and Secretarial Audits is untenable. Moreover, being the senior most executive of the company and the person primarily responsible for running the affairs of the company, he cannot shy away from his responsibility and be allowed to take the defence that he relied solely upon the Compliance Officer or the reports of the Auditor or Secretarial Audits. Accordingly, Shri Ravikumar, Managing Director of the company is responsible for all the deeds / acts of the company related to diversion of IPO proceeds. It has already been discussed in preceding paragraphs how diversion of IPO proceeds tantamount to fraud. Thus, it is held that Shri Ravikumar has violated Regulations 3 (b), (c), (d) and 4(1) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act.

**Liability of Directors in the Audit Committee**

148. As per prospectus of ATL and Annual report of ATL for the financial years 2010-11 and 2011-12, Shri Mohan H Ramakrishna, Shri R.J. Kamath, Shri Subrahmanya

Dandala Kannayya Reddy were the 3 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.

149. In the extant matter, ATL had come out with an IPO and had raised ₹ 170 crore from the market. Seen in this light, the role of the Audit Committee becomes all the more significant. As per Clause 49 II (D) 5A of the Listing Agreement, *"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"*.

150. Shri R.J. Kamath has submitted that he had no knowledge of the workings of the company other than what was presented in the Board meetings. In this regard, it is noted 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 the Noticee 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. Therefore, the submission of the Noticee that he had no knowledge of the workings of the company is not acceptable.

151. Further, he had stated that as an Audit Committee member he was not under any obligation to investigate the matter further than what was brought to his notice by the Auditors of the company. 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 (as it is his own submission that he has suggested to take advice of a reputed valuer), terms of the agreement, parties involved, when the money was transferred etc. If the Noticee would have made the inquires, 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. In

this context, I would like to refer to the observations made by the Hon'ble SAT in the matter of *Mr. N. Narayanan* Vs. *The Adjudicating Officer* dated October 05, 2012:

*"…The members of the audit committee are expected to exercise due oversight of the company's financial reporting process and to ensure that the financial statement is correct, sufficient and credible. It is also expected to conduct a meaningful review with special emphasis on major accounting entries and significant adjustments made in the accounts before putting up the statements for the approval of the Board. The board of directors of the company has entrusted the audit committee with an onerous duty to see that the financial statements are correct and complete in every respect…"*

152. Taking support of aforesaid observation of Hon'ble SAT, I note that the Noticee being member of Audit Committee was responsible for reviewing the utilization / application of funds raised through the IPO. Noticee has not shown the steps taken by him to conduct a meaningful review of the utilization of IPO proceeds. Rather as discussed in the preceding paragraph, the Noticee overlooked numerous red flags and was reckless in carrying out his role and responsibility as an Audit Committee member.

153. Shri Mohan H Ramakrishna has submitted that there was never any attempt made by company to educate him in the Board process, duties and responsibilities of the Independent Director. 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 is not aware of the role and responsibilities of an Independent Director. Even for a moment, if the Noticee's submission is accepted, it is noted that he, as per his own admission 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. 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. 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.

154. Noticee has submitted that neither finance related matters were discussed with him nor he had access to the bank statements. The said submission of the Noticee is untenable as being part of the Audit Committee of the company, he had access to or could have accessed the records pertaining to the finances of the company. Clause 49 II (C) 2 of Listing Agreement empowers the member of the audit committee to seek any information from any employee. Thus, he had access to the finances and bank statements of the company.

155. The Noticee 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.

156. Further, the Noticee has submitted that he has exercised all due diligence to prevent commission of the offence and has acted honestly and responsibly. The said submission of the Noticee is in contradiction to his other submissions wherein he has stated that he had signed the attendance sheet of the Board meetings without having any idea about the discussions held in such meetings. 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. Rather, his actions shows 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.

157. 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.

158. In view of the above, it was 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 in preceding paragraph, 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. Hence, it is concluded that the Audit Committee members namely Shri Mohan H Ramakrishna, Shri R.J. Kamath, Shri Subrahmanya Dandala Kannayya Reddy 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.

159. 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. Thus, it can be held that Shri Mohan H Ramakrishna, Shri R.J. Kamath and Shri Subrahmanya Dandala Kannayya Reddy 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.

**Liability of Conduits**

160. It is noted from the findings in the preceding paragraphs that following 11 conduits were used by ATL to divert the IPO proceeds:

| 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. |

161. Except HDK International Pvt. Ltd. and SK Universal Pvt. Ltd., none of the conduits have 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…"*

162. With respect to HDK International Pvt. Ltd. and SK Universal Pvt. Ltd, it is noted that the merit of their submissions have already been considered and the same was

found to be inadequate. With respect to the other 9 conduits, it is observed, 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.

163. In view of the above, it can be held that 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 by playing their respective roles in diverting the IPO proceeds.

*Wrong disclosure and Non-disclosure made in the Prospectus*

164. In order to proceed further, it is relevant to reproduce the applicable provisions. They are reproduced below:

- Regulations 3 (b), (c), (d) and 4(1), (2) (f) and (k) of PFUTP Regulations read with Section 12A (a), (b) and (c) of SEBI Act. Text of Regulations 4 (2) (f) and (k) of PFUTP Regulations is as follows (Rest is already reproduced above):

  **PFUTP Regulations**

  **4. Prohibition of manipulative, fraudulent and unfair trade practices**

  …

  (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves:-

  **…**

(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.

- Regulations 57(1), 60(7)(a) and Clause (2)(IX)(B)(12) (a)(v) Part A of Schedule VIII of ICDR Regulations. Text of the Regulations is reproduced below:

**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.

**Public communications, publicity materials, advertisements and research reports**

60(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;

**Part A of Schedule VIII**

**IX (B) (12) Related Party Transactions**: The issuer shall disclose the following details of related party transactions and make disclosures in accordance with the requirements of Accounting Standard (AS 18) "Related Party Disclosures" issued by the Institute of Chartered Accountants of India:

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

(i) …

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

165. It has already been held in the preceding paragraph that wrong disclosure with respect to the utilization of bridge loan has been made in the Prospectus. Further, it is also concluded that the financial transaction with Equastone was a related party transaction which was not disclosed in the Prospectus. In this regard, I note that the a perusal of the Regulation 57 of ICDR Regulations makes it clear that the offer document is required to contain all material disclosures so as to enable the applicant 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. Schedule VIII clearly indicates that the means and sources of financing including details of bridge loan and related party transactions have to be disclosed in the Prospectus.

166. 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. Not only the company failed to make true, fair and adequate disclosures but also failed to make the disclosure regarding related party transaction in the Prospectus.

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

168. Shri S Sudheer who is the CFO of the company is also liable for non-disclosure and wrong disclosure as he being the CFO 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.

169. Ms. Sobha Acharaya has submitted that she was not aware of the financial transactions of the company and that she was made to sign the Prospectus. The submission of the Noticee is not satisfactory. She being a Company Secretary is aware of her roles and responsibilities, more particularly disclosures to be made in the Prospectus including the veracity of the disclosures. She knows that investors would

rely on the contents of the Prospectus before subscribing to the issue and therefore she has to do her necessary due diligence to satisfy herself that the contents of the Prospectus reflect a true and complete picture of the company. In the given matter she has not shown the steps taken by her to check the veracity of the contents of the Prospectus rather she has submitted that she has relied upon the judgment of other professionals. The same is untenable as it indicates abdication of responsibility of a Company Secretary.

170. Shri Jamili Jalaiah who was the Compliance Officer is also responsible for the non-disclosure and wrong disclosure in the Prospectus. He being one of the senior level employee reporting to the Board has the responsibility to ensure that the company complies with all the legal and regulatory provisions. In the extant matter, it has been held that ATL has failed to make true, fair and complete disclosure in its Prospectus. As discussed in previous paragraphs, the one of the legal requirements in the prospectus is to publish true facts. Therefore, Shri Jamili Jalaiah being the Compliance Officer is also liable for the aforesaid failure of the ATL.

171. With respect to the Independent Directors of ATL namely Shri R.J. Kamath Subrahmanya Dandala Kannayya Reddy, Shri Mohan H. Ramakrishna, Shri Mathew James Manimala and Shri Ashok Kumar Gopal Rao Jultha, it is noted that there is no allegation in the SCN that the wrong and non-disclosure in the Prospectus happen 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 has been brought on record to show that why the transaction with Equatstone would have raised red flags for the Directors especially when the money was transferred to Equastone. In the absence of any material demonstrating their role or omission with respect to the non-disclosure and wrong disclosure, it cannot be held that Shri R.J. Kamath Subrahmanya Dandala Kannayya Reddy, Shri Mohan H. Ramakrishna Shri Mathew James Manimala and Shri Ashok Kumar Gopal Rao Jultha are liable for the same.

172. In respect of incorrect disclosures, 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"*

173. 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."*

174. 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.

175. 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.

176. 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.

177. 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…"*

178. In the extant matter by virtue of making wrong disclosure with respect to utilisation of bridge loan and failure to make disclosure about a related party transaction, the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making true and complete disclosures, the company, Shri Ravikumar, Shri S. Sudheer, Ms. Shobha Sudhakar Acharya and Shri Jamili Jalaiah have misled the investors which is detrimental to the interest of investors in securities market and the same is in violation 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) and

Clause (2)(IX)(B)(12) (a)(v) Part A of Schedule VIII of ICDR Regulations.

179. 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

301. (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.

***Issue No. 4*** **-** *What directions, if any should be issued against the Noticees?*

180. Hon'ble Supreme Court of India in the matter of *N Narayanan* Vs. *Adjudicating Officer, Sebi* decided on April 26, 2013 while dealing with the concept of market abuse in securities market has observed as follows:

*"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 deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abuser.*

*…*

*A word of caution:*

*43. SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto. People with power and money and in management of the companies, unfortunately often command more respect in our society than the subscribers and investors in their companies. Companies are thriving with investors' contributions but they are a divided lot. SEBI has, therefore, a duty to protect investors, individual and collective, against opportunistic behavior of Directors and Insiders of the listed companies so as to safeguard market's integrity.*

*…*

*SEBI has the duty and obligation to protect ordinary genuine investors and the SEBI is empowered to do so under the SEBI Act so as to make security market a secure and safe place to carry on the business in securities."*

181. I note that Section 11 of SEBI Act casts a duty on the Board to protect the interests of investors in securities and to promote the development of and to regulate the securities market. For achieving such object, it has been authorised to take such measures as it thinks fit. Thus, power to take all measures necessary to discharge its duty under the statute which is a reflection of the objective disclosed in the preamble has been conferred in widest amplitude. Pursuant to the said objective, PFUTP Regulations and ICDR Regulations have been framed. The said Regulations apart from bringing transparency and fairness among other things aims to preserve and protect the market integrity in order to boost investor confidence in the securities market. By diverting the IPO proceeds and by failing to make true and adequate disclosures in the Prospectus, not only the investors were defrauded and misled but it has also impaired the integrity of the securities market. In view of the same and considering the violations committed by the Noticees, I find that it becomes necessary for SEBI to issue appropriate directions against them.

***Order***

182. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me in terms of Section 19 read with Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act issue the following directions:

a) ATL (PAN: AADCA1623M) and Shri D Ravikumar (PAN: ACNPK9304L) are hereby restrained from accessing the securities market for a period of ten 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 ten years, from the date of this order.

b) Shri D Ravikumar (PAN: ACNPK9304L) is further 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 ten years.

c) Shri Ramdas Janardhana Kamath (PAN: AAEPK8776D), Shri Subrahmanya Dandala Kannayya Reddy (PAN: AANPR6123L) and Shri Mohan Hosahally Ramakrishna (PAN: AHQPR8898G) are hereby 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, they are 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 this order.

d) 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., are hereby restrained from accessing the securities market for a period of seven 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 seven years, from the date of this order.

e) Shri S. Sudheer, Ms. Shobha Sudhakar Acharya (PAN: AJLPA3219K) and Shri Jamili Jalaiah (PAN - ACTPJ7423K) are hereby restrained from accessing the securities market for a period of two 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 two years, from the date of this order.

f) Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual

funds, of the Noticees shall remain frozen.

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

184. A copy of this order shall be served upon all recognised Stock Exchanges, Depositories and the Registrar and Share Transfer Agents to ensure compliance with the above directions.

185. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned Registrar of Companies for their information and necessary action.

**DATE: September 27, 2019** **MADHABI PURI BUCH**

**PLACE: Mumbai** **WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**