BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. : Order/VV/NK/2022-23/16008-16015]

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

In respect of:

Noticee No.	Name of Noticee	PAN/CIN/DIN of Noticee
1.	Acropetal Technologies Limited	AADCA1623M
2.	Maars Software International Ltd.	AAACM4527H
3.	Balaji Trading Corporation (Proprietor – Shailesh Kumar H Shah)	BLFPS4698F
4.	HDK International Pvt Ltd	AABCH7897J
5.	Viraj Mercantile Pvt Ltd	AADCV3852H
6.	SV Enterprises	ACRPP5552H
7.	Raj Real Estate and Finvest Pvt. Ltd.	AABCR3037J
8.	Dirva Trade Impex Pvt. Ltd.	AADCD6011C

IN THE MATTER OF ACROPETAL TECHNOLOGIES LIMITED

BACKGROUND

1. Acropetal Technologies Limited (herein after referred to as "**ATL**" / "**Company**") came out with an Initial Public Offer (herein after referred to as "**IPO**") for issue of 1,88,88,889 equity shares of face value Rs. 10/- each at a price of Rs. 90/- per share, aggregating to Rs. 170 Crore during February 2011. ATL was listed on the exchanges BSE and NSE, on March 10, 2011. The scrip opened on March 10, 2011 at Rs. 92.00/- & Rs. 130/- on March 10, 2011 and touched a high of Rs. 140/- & Rs. 150/- on NSE & BSE respectively.

2. Securities and Exchange Board of India (herein after referred to as "**SEBI**") took up the preliminary investigation in the IPO of Acropetal Technologies Limited on February 08, 2012.During the collection of information, it was noted that the response of the ATL to SEBI's letter was found to be incomplete/contradictory. ATL failed to submit documentary evidences and certain entities did not reply to SEBI's letters. Since ATL and other entities did not co-operate during preliminary investigation, a formal investigation was proposed to be carried out in the matter of IPO of ATL.

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

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

per SEBI summons. Investigation in the matter of IPO of ATL was completed and actions as recommended by IVD were approved by the competent authority on March 27, 2017. Thereafter, investigation was carried out with respect to trading activities of certain entities in the scrip of Acropetal Technologies Limited by Investigation Department of SEBI (IVD). Subsequently, a reference was received by IVD from integrated Surveillance department of SEBI (ISD) *inter alia* indicating that several major allottees in the IPO sold their entire subscription in short duration after listing.

5. Thus, the scope of instant investigation was to ascertain whether there was any violation of the provisions of SEBI Act, 1992 and SEBI (PFUTP) Regulations, 2003 with regard to trading in the scrip of ATL during the investigation period.

6. ISD forwarded the examination report in the matter of Acropetal Technologies Limited for the period of March 10, 2011 to March 24, 2011 to IVD. Hence, the Investigation period for the investigation was taken as March 10, 2011 to March 24, 2011 (hereinafter referred to as "Investigation period"/"IP"). However, wherever deemed necessary, a reference has also been made beyond the above period

7. Pursuant to the Conclusion of extant Investigation on March 05, 2018, SEBI initiated adjudication proceedings under section 15 HA of SEBI Act for the alleged violation of section 12A(a), (b) and (c) of SEBI Act read with Regulation 3 (a), (b), (c), (d), 4(1) and 4(2)(a) of PFUTP Regulations by Acropetal Technologies Limited (hereinafter referred to as "ATL/company"), Maars Software International Ltd. (hereinafter referred to as "Maars"), Balaji Trading Corporation (hereinafter referred to as "Balaji"), HDK International Pvt. Ltd. (hereinafter referred to as "HDK"), Viraj Mercantile Pvt Ltd. (hereinafter referred to as "Viraj") S. V. Enterprises (hereinafter referred to as "SV"), Raj Real Estate and Finvest Pvt. Ltd. (hereinafter referred to as "Raj") and Dirva Trade Impex Pvt. Ltd. (hereinafter referred to as "Dirva").

APPOINTMENT OF ADJUDICATING OFFICER

8. Shri Sahil Malik (hereinafter referred to as "erstwhile AO") was appointed as the Adjudicating Officer **(AO)** by SEBI vide communication order dated April 24, 2018 under

Section 19 of the SEBI Act read with Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**) to conduct adjudication proceedings *inter-alia* in respect of the Noticees, in the manner specified under Rule 4 of the Adjudication Rules read with Section 15-I (1) and (2) of the SEBI Act, and if satisfied that penalty is liable, to impose such penalty deemed fit in terms of Rule 5 of the Adjudication Rules in terms of Section 15HA of the SEBI Act. Subsequently upon transfer of Shri Sahil Malik, the undersigned has been appointed as AO by SEBI in the matter vide Order dated August 13, 2019, to inquire into and adjudge, the aforesaid violations alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, HEARING NOTICE AND REPLY

9. Based on the findings made during the investigation, a common Show Cause Notice dated July 5, 2018 (hereinafter referred to as **"SCN"**) was issued to the Noticees in terms of Rule 4 (1) of the Adjudication Rules read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15HA of the SEBI Act, 1992 for the violations alleged to have been committed by Noticees by erstwhile AO.

10. The allegations levelled against the Noticees in the SCNs are summarized as follows: -.

SV

4. On analysis of the bank statements of the entities, it was observed that SV received funds from entities related to ATL. A pictorial representation of fund movement from ATL to SV is given:

5. From the bank account statements (copies placed at Annexure 2) of entities mentioned in above chart, the following was alleged:

i) After the IPO proceeds got credited into ATL's Bank account (Account no. – 101205000264 with ICICI Bank) on 09/03/2011, ATL transferred Rs. 40 crore to bank account of Maars (Account no. – 101205000181 with ICICI Bank) on 09/03/2011. Prior to receiving this money from ATL, the balance in aforementioned Maars bank account was Rs. 11709.

ii) Maars transferred Rs. 5 crore to bank account of Balaji (Account no. – 2465 with Gujarat Mercantile Co-Operative Bank) on 09/03/2011. Prior to receiving this money from Maars, the balance in aforementioned Balaji bank account was Rs. 2263.

iii) Thereafter, Balaji transferred Rs. 5 crore to two bank account of SV. (Rs. 3 crore in Account no. – 00245013273 with ICICI Bank and Rs 2 crore in Account no. – 524011012343 with ING Vysya Bank). Prior to receiving this amount from Balaji, total balance in SV's two bank accounts was Rs. 1.55 lakhs (approx.). Additionally, one another entitity Alka India Limited had also transferred Rs. 2 crore to SV's bank account no. 00245013273 (ICICI Bank) on 09/03/2011 and SV transferred Rs. 2 crore on the same day (i.e. 09/03/2011) to its trading member i.e. Bhargava Lodha Stock Brokers.

iv) Further, after receiving Rs. 5 crore from Balaji in its 2 bank accounts on 11/03/2011, SV transferred Rs. 2.74 crore (approx.) to Alka India Limited on 12/03/2011 and Rs. 2 crore to Bhargava Lodha Stock Brokers on 17/03/2011. Hence, SV had transferred a total of Rs. 4 crore to its trading member i.e. Bhargava Lodha Stock Brokers.

v) It was also observed that during the investigation period, SV made a net purchase of 568542 shares of ATL amounting to Rs. 4.50 crore (approx.) while trading through its trading member Bhargava Lodha Stock Brokers Private Limited.

6. From the above, it is alleged that SV had utilised the amount received from Balaji to purchase shares of ATL during the investigation period. It is also observed that Balaji received these funds indirectly from ATL routing through Maars.

Raj

7. ATL transferred funds to Maars, Raj and Dirva and a part of that funds was further transferred by these entities to other entities who traded in the scrip of ATL subsequent to listing. The fund movement from ATL to Raj to other entities (who traded in scrip of ATL during the investigation period) is shown below:

8. From the bank account statements (copies placed at Annexure 3) of entities mentioned in above chart, the following was observed:

i) After the IPO proceeds got credited into ATL's Bank account (Account no. – 009010300011097 with Axis Bank) on 09/03/2011, ATL transferred Rs. 14.5 crore to HDK (Account no. – 0001-CA0309-050 with Indusind Bank) on 10/03/2011. Prior to receiving this *money from ATL, the balance in aforementioned HDK bank account was Rs. 22.46 lakh (approx.).*

ii) HDK transferred Rs. 1.85 crore to Raj (Account no. – 1042101100839 with Oriental Bank of Commerce) on 10/03/2011. Prior to receiving this money from HDK, the balance in aforementioned Raj's bank account was Rs. 10.06 lakh (approx.).

iii) Thereafter, Raj transferred Rs. 1.25 crore to its trading member i.e. "IFCI Financial Services Enterprises" on 10/03/2011.

iv) During the investigation period, Raj made a net purchase of 175000 shares of ATL amounting to Rs. 2.02 crore (approx.) while trading through its trading member IFCI Financial Services Enterprises.

v) It was also observed that the aforementioned fund movements from ATL to HDK to Raj to IFCI took place on the same day itself i.e. 10/03/2011.

Dirva

9. A pictorial representation of fund movement from ATL to Dirva is shown below:

10. From the bank account statements (copies placed at Annexure 4) of entities mentioned in above chart, the following was observed:

i) After the IPO proceeds got credited into ATL's Bank account (Account no. – 009010300011097 with Axis Bank) on 09/03/2011, ATL transferred Rs. 5 crore to bank account of Viraj (Account no. – 910020030165850 with Axis Bank) on 09/03/2011. Prior to receiving this money from ATL, the balance in Viraj's bank account was Rs. 16170.

ii) Viraj transferred Rs. 5 crore to bakn account of Dirva (Account no. – 10772000001830 with ICICI Bank) on 10/03/2011. Prior to receiving this money from Viraj, the balance in Dirva's bank account was Rs. 10490.

iii) Thereafter, Dirva transferred Rs. 5 crore to its trading member i.e. "MTL" on 10/03/2011.

iv) During the investigation period, Dirva made a net purchase of 453715 shares of ATL amounting to Rs.4.60 crore (approx.) while trading through its trading member MTL Financial Services Enterprises.

v) It was also observed that the aforementioned fund movements from ATL to Viraj to Dirva to MTL took place on within 1 day.

11. In view of the above, it is alleged that ATL diverted the money raised through IPO to indirectly fund SV, Raj and Dirva who traded in the scrip of ATL. Hence, ATL and the entities who aided and abetted ATL in siphoning off of IPO proceeds and acted as layers/ conduits in the movement of funds and diversion of proceeds (i.e. Maars, Balaji, HDK, Viraj) and the entities who eventually traded in the scrip with the help of funds received indirectly from ATL (i.e. SV, Raj and Dirva) together acted in a fraudulent manner with the investors of ATL. Since the aforementioned entities (who traded in the scrip of ATL) did not use their own funds for trading, their trades are not considered as genuine. These trades acted as a fraud on the investors by creating a misleading appearance of trading in the securities market.

12. ATL, Maars, Balaji, HDK, Viraj, SV, Raj and Dirva are, therefore, called upon to show cause as to why an inquiry should not be held against them and penalty be not imposed under section 15 HA of SEBI Act for the alleged violation of section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) of PFUTP Regulations.

11. The SCN was served upon the Noticees through Speed Post Acknowledgement Due (hereinafter referred to as "**SPAD**") which was duly served to Noticee no. 3,4,6 and 7. Further, the said SCN was served upon the Noticee no. 1, 2,5 and 8 through the affixture dated August 07, 2018, August 03, 2018, August 02, 2018 and August 04, 2018 respectively in terms of Rule 7(2) of the Adjudication Rules.

12. Following are the details of service of SCN, Hearing Notice (HN) in the interest of natural justice and in terms of Rule 4 of Adjudication Rules and Reply (if any) of Noticees:

A) <u>Noticee No. 1 Viz. Acropetal Technologies Ltd.:</u>

i. Pursuant to affixture of SCN, ATL vide letter dated August 14, 2018 requested opportunity of personal hearing and to explain things in the last week of September 2018.

ii. vide hearing notice dated September 27, 2018, ATL was given an opportunity of hearing on October 10, 2018. ATL again requested to adjourn hearing to 22.10.2018 or in the last week of November 2018.

iii. vide hearing notice dated October 11, 2018, hearing was again provided to ATL on October 22, 2018 but the said hearing notice returned undelivered.

iv. Thus, Soft copy of the SCN were uploaded on SEBI website- www.sebi.gov.in for the information of the Noticee and a Notice was published in two newspapers one in a daily newspaper having nationwide circulation and another in a newspaper having circulation in the language of the region where that Noticee was last known to have resided or carried on business i.e., in Times of India, Bangalore edition and in Vijayavani, Bangalore Edition dated 18.10.2018 to appear on 30.10.2018. Vide the aforesaid Notice, the Noticee was also advised that reply to SCN should reach the Adjudicating Officer within 14 days from the date of this publication in terms of the SCN.

v. Noticee again vide letter dated October 30, 2018 sought adjournment to hearing in the last week of November 2018.

vi. vide email dated November 06, 2018, Noticee was given hearing on November 27, 2018. Authorised Representative (AR) of ATL appeared for hearing on November 27, 2018 .

vii. During hearing proceedings, Noticee requested further time to file reply to SCN. Thus, another opportunity of hearing was given to ATL on January 14, 2019 and Noticee was advised to file reply on or before January 14, 2019.

viii. Vide email dated January 13,2019, Noticee requested for adjournment of hearing. In this regard, vide email dated January 14, 2019, Noticee was informed that January 14, 2019 was fixed at the request of its AR and thus, ATL can submit reply on or before January 30, 2019.

ix. Vide letter dated January 30, 2019, Noticee requested for one more personal hearing and requested to keep the instant proceedings in abeyance till the disposal of show cause notice dated 10/08/2017 issued in 11b proceedings against it in the matter of Acropetal Technologies Ltd for deviating from the objects of the issue and not utilising the IPO proceeds as per the objects stated in the prospectus.

x. In the interest of natural justice and in terms of Rule 4 of Adjudication Rules, an opportunity of personal hearing was accorded to Noticee through WebEx platform due to Covid-19 Pandemic on October 07, 2021 vide hearing notice dated September 08, 2021.Hearing notice returned undelivered. In this regard, soft copy of the hearing notice was uploaded on SEBI website- www.sebi.gov.in for the information of the Noticee, a Notice was published in Times of India, Bangalore edition and in Vijayavani, Bangalore Edition dated 29/10/2021 to appear for hearing on November 17, 2021.

13. I note that, pursuant to paper publication of hearing notice, Noticee no. 1 viz. Acropetal Technologies Limited vide 4 Emails dated November 13, 2021 submitted the following:

Email 1:

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

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

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

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

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

Email 2:

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

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

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

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

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

<u>Email 3:</u>

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

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

<u>Email 4:</u>

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1. *By the above said show cause notice it is proposed to impose penalty under Section under Section 115HA of SEBI Act for the alleged violation of Section 12A(a), (b) and (c) of the SEBI Act read with Regulation 3(a), (b), (c), (d), 4(2)(f), (k) and (r) of PFUTP Regulations and Regulation 57(1), 60(7)(a) of ICDR Regulations.*
2. *At the outset itself, the Noticee Company submits that the allegations in the show cause notice are based on wrong appreciation of facts.*
3. *The Noticee submits that this Hon'ble Adjudicating Authority had granted two weeks' time to file reply. However the Noticee Company could not file as the entire documents have not been received by Mr. Ravi Kumar and he had no access to the documents and papers related to the company.*
4. *Inspite of not getting the documents, with great difficulty trying to find the documents from various sources and preparing the reply. Due to the change in the legal council and delay*

in receiving the documents , we humbly request you to please grant us another two weeks time for the filing the reply.

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

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

16. I note that, despite Sufficient opportunities provided to Noticee no. 1 to submit its reply to the allegations mentioned against Noticee no. 1 in the SCN. Noticee no. 1 has failed to reply to the allegations mentioned against Noticee no. 1 in the SCN on merits.

<u>Noticee no. 02 -Maars Software International Ltd.</u>

i. Pursuant to affixture of SCN, Maars did not reply to SCN.

ii. vide hearing notice dated September 27, 2018, Maars was given an opportunity of hearing on October 10, 2018. The said hearing notice could not be affixed at the address available on record.

iii. Thus, Soft copy of the SCN was uploaded on SEBI website- www.sebi.gov.in for the information of the Noticee and a Notice was published in two newspapers one in a daily newspaper having nationwide circulation and another in a newspaper having circulation in the language of the region where that Noticee was last known to have resided or carried on business i.e., in Times of India, Chennai edition and Daily thanthi dated 18.10.2018 to appear for hearing on 30.10.2018. Vide the aforesaid HN, the Noticee was also advised that reply to SCN should reach the Adjudicating Officer within 14 days from the date of this publication in terms of the SCN.

iv. In the interest of natural justice and in terms of Rule 4 of Adjudication Rules, an opportunity of personal hearing was again accorded to Noticee through WebEx platform due to Covid-19 Pandemic on October 07, 2021 vide hearing notice dated September 08, 2021.Hearing notice returned undelivered. In this regard, soft copy of the hearing notice was uploaded on SEBI website- www.sebi.gov.in for the information of the Noticee, a Notice was published in Times of India, Chennai edition and Daily thanthi dated 29/10/2021 to appear for hearing on November 17, 2021. Vide the aforesaid Notice, the Noticee was again advised that reply to SCN should reach the Adjudicating Officer within 14 days from the date of this publication in terms of the SCN.

v. However, I note that, Maars failed to appear on scheduled date and time of hearing and did not made any reply to SCN till the date of this order.

<u>Noticee no. 03- Balaji Trading Corporation (Proprietor - Shailesh Kumar H Shah)</u>

i. SCN was duly delivered to Balaji through SPAD. However, Balaji did not reply to SCN.

ii. Vide hearing notice dated August 01, 2018, Balaji was provided opportunity of hearing on August 28, 2018.said HN was duly delivered to Balaji. However, Balaji failed to appear for hearing on August 28, 2018

iii. vide hearing notice dated September 27, 2018, Balaji was again provided an opportunity of hearing on October 10, 2018. Balaji failed to appear for hearing on scheduled date and time of hearing and also failed to file any reply to SCN.

iv. In the interest of natural justice and in terms of Rule 4 of Adjudication Rules, an opportunity of personal hearing was again accorded to Noticee through WebEx platform due to Covid-19 Pandemic on October 07, 2021 vide hearing notice dated September 08, 2021.Hearing notice returned undelivered. In this regard, soft copy of the hearing notice was uploaded on SEBI website- www.sebi.gov.in for the information of the Noticee, a Notice was published in Times of India, Ahmedabad edition and Cine Sandesh dated 29/10/2021 to appear for hearing on November 17, 2021. Vide the aforesaid Notice, the Noticee was again advised that reply to SCN should reach the Adjudicating Officer within 14 days from the date of this publication in terms of the SCN.

v. However, I note that, Balaji failed to appear on scheduled date and time of hearing and did not made any reply to SCN till the date of this order.

Noticee no. 4- HDK International Pvt. Ltd.

i. SCN was duly delivered to HDK through SPAD. Noticee vide letter dated 28.07.2018 requested time till 15.08.2018 to submit reply to SCN.

ii. Vide hearing notice dated August 01, 2018, Noticee was provided opportunity of hearing on August 28, 2018.Thus, Noticee vide letter dated August 13, 2018, inter-alia submitted that, their company is in business of jewellery and diamonds. It has given money to ATL for developing jewellery software. HDK submitted a copy of ledger account statement in this regard and further submitted that, due to some business crisis, ATL couldnot fulfill their requirement of developing jewellery software and afterwards deal was cancelled/terminated and for that reason company took back principal amount of money.

iii. Vide hearing notice dated September 27, 2018, HDK was given an opportunity of hearing on October 10, 2018. Noticee vide letter dated October 04, 2018 requested for adjournment of hearing after October 15.

iv. Thus, last and final opportunity of hearing was accorded to HDK on October 30, 2018 vide hearing notice dated October 17, 2018. The said HN returned undelivered.

v. Thus, Soft copy of the SCN was uploaded on SEBI website- www.sebi.gov.in for the information of the Noticee and a Notice was published in two newspapers one in a daily newspaper having nationwide circulation and another in a newspaper having circulation in the language of the region where that Noticee was last known to have resided or carried on business i.e., in Times of India, Mumbai edition and Navbharat time dated 18.10.2018 to appear for hearing on 30.10.2018. Vide the aforesaid HN, the Noticee was also advised that reply to SCN should reach the Adjudicating Officer within 14 days from the date of this publication in terms of the SCN.

vi. Noticee failed to appear for hearing on October 30, 2018. HDK vide letter dated October 30, 2018 stated that hearing notice dated October 17, 2018 was received by them on

22.10.2018 and place on record previous communications with SEBI dated 13.08.2018, and communication during investigation dated 22.02.2016 and 23.03.2016.

vii. Thereafter, vide email dated 30.10.2018 another hearing was given to HDK on October 31, 2018. Noticee did not availed hearing on October 31, 2018.

viii. Vide email dated November 01, 2018, Noticee was given final opportunity of hearing on November 05, 2018.Noticee appeared for hearing on November 05, 2018 and during hearing HDK didnot filed any reply and requested for another opportunity of hearing on November 12, 2018.the request of HDK was acceded to.

ix. Noticee appeared for hearing on November 12, 2018 and submitted a copy of documents submitted by HDK during investigation in the matter of IPO of ATL.

x. In the interest of natural justice and in terms of Rule 4 of Adjudication Rules, an opportunity of personal hearing was again accorded to Noticee through WebEx platform due to Covid-19 Pandemic on October 07, 2021 vide hearing notice dated September 08, 2021 which was duly delivered to Noticee on 17/09/2021. however, HDK didnot appeared for hearing on scheduled date and time.

<u>Noticee no. 5- Viraj Mercantile Pvt. Ltd.</u>

i. Pursuant to affixture of SCN on August 02, 2018. Viraj did not reply to SCN.

ii. vide hearing notice dated September 27, 2018, Viraj was given an opportunity of hearing on October 10, 2018.However, the said HN was not affixed successfully.

iii. Thus, Soft copy of the SCN was uploaded on SEBI website- www.sebi.gov.in for the information of the Noticee and a Notice was published in two newspapers one in a daily newspaper having nationwide circulation and another in a newspaper having circulation in the language of the region where that Noticee was last known to have resided or carried on business i.e., in Times of India, Mumbai edition and Navbharat times dated 18.10.2018 to appear for hearing on 30.10.2018. Vide the aforesaid HN, the Noticee was also advised that reply to SCN should reach the Adjudicating Officer within 14 days from the date of this publication in terms of the SCN.

iv. Noticee failed to appear for hearing on October 30, 2018.

v. In the interest of natural justice and in terms of Rule 4 of Adjudication Rules, an opportunity of personal hearing was again accorded to Noticee through WebEx platform due to Covid-19 Pandemic on October 07, 2021 vide hearing notice dated September 08, 2021. Hearing notice returned undelivered. In this regard, soft copy of the hearing notice was uploaded on SEBI website- www.sebi.gov.in for the information of the Noticee, a Notice was published in Times of India, Mumbai edition and Navbharat times dated 29/10/2021 to appear for hearing on November 17, 2021. Vide the aforesaid Notice, the Noticee was again advised that reply to SCN should reach the Adjudicating Officer within 14 days from the date of this publication in terms of the SCN.

vi. However, I note that, Viraj failed to appear on scheduled date and time of hearing and did not made any reply to SCN till the date of this order.

Noticee no. 06- SV Enterprises

i. SCN was duly delivered to SV through SPAD. However, SV did not reply to SCN.

ii. Vide hearing notice dated August 01, 2018, SV was provided an opportunity of hearing on August 28, 2018.said HN was duly delivered to SV. However, SV failed to appear for hearing on August 28, 2018

iii. vide hearing notice dated September 27, 2018, SV was again provided an opportunity of hearing on October 10, 2018. SV failed to appear for hearing on scheduled date and time of hearing and also failed to file any reply to SCN.

iv. In the interest of natural justice and in terms of Rule 4 of Adjudication Rules, an opportunity of personal hearing was again accorded to Noticee through WebEx platform due to Covid-19 Pandemic on October 07, 2021 vide hearing notice dated September 08, 2021.Said HN was duly delivered to SV on September 20, 2021.

v. However, I note that, SV failed to appear on scheduled date and time of hearing and also did not made any reply to SCN till the date of this order.

Noticee no. 07- Raj Real Estate and Finvest Pvt Ltd

i. SCN was duly delivered to Raj through SPAD. However, Raj did not reply to SCN.

ii. Vide hearing notice dated August 01, 2018, Raj was provided an opportunity of hearing on August 28, 2018.said HN was duly delivered to Raj.

iii. vide letter dated August 22, 2018, Raj requested time till September 05, 2018 to submit reply to SCN and adjourn hearing thereafter. However, I note that, no reply to SCN was made by Raj by the said date.

iv. vide hearing notice dated September 27, 2018, Raj was again provided an opportunity of hearing on October 10, 2018. Vide letter dated October 05, 2018, Raj made the reply to SCN and authorised their representative (AR) to appear for hearing on October 10, 2018.

v. AR of Raj appeared on Schedule date and time of hearing and during hearing, Raj further undertook that , it shall submit evidence that money had been borrowed from HDK International Pvt. Ltd. or any other lender on previous occasion for trading purpose. Further, the Noticee undertook that it shall submit the ledger details from 2 years prior to the date of listing of the shares of Acropetal Technologies Ltd. till 2 years hence the date of listing.

vi. I note that, vide letter dated October 29, 2018, Raj submitted ledger account of various parties including HDK.

vii. In the interest of natural justice and in terms of Rule 4 of Adjudication Rules, an opportunity of personal hearing was again accorded to Noticee through WebEx platform due to Covid-19 Pandemic on October 07, 2021 vide hearing notice dated September 08, 2021.Said HN was duly delivered to Raj on September 17, 2021.

viii. vide letter dated October 21, 2021,Raj requested for adjournment of hearing. Request of Raj was acceded to and another opportunity of hearing was accorded to Raj on November 16, 2021.

ix. AR of Raj appeared for hearing on scheduled date and time of hearing.

x. During hearing proceedings, AR reiterated the submissions made by the Noticee vide letter dated October 05, 2018 and additional submissions made vide letter dated October 29, 2018 and also made following additional submissions during hearing proceedings:

1. The decision passed by the Hon'ble Tribunal in the matter of:

a. Umang Dhanuka & Ors. v SEBI (Appeal No. 102 of 2020)- Relevant Paragraphs- Para 37 and Para 38 at page 39 and 40 of the Order.

b. Baldevsinh Vijaysinh Zala (Appeal No.150 of 2019)- Relevant Paragraphs- Para 8 at Page 17 and 18 of the Order.

2. The decision passed by the Ld. AO Mr. G.Ramar in the matter of IPO of Tijariya Polypipes Limited bearing reference no. Order/GR/KG/2021-22/12298-12300 decided on June 21, 2021- Relevant Paragraphs- Para 13 from pages 10 to 13 of the Order.

3. The Authorized Representative also submitted that Section 15HA of the SEBI Act, at present, reads as follows:

Penalty for fraudulent and unfair trade practices.

"15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

However, prior to the amendment in 2014 the section read as, *"15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher".*

It was submitted that in determining the quantum of penalty to be levied upon the noticee, if any, the provision as applicable at the relevant time may be taken into consideration and no penalty may be levied. The alleged default, if any, pertains to the year 2010-2011. In view of the same it was requested that The Adjudicating Officer may take a lenient view against the noticee and may not levy any penalty.

Following are the reply dated October 05, 2018 and October 29, 2018 made by Raj:

Letter dated October 05, 2018:

a. *We are a regular investor in Securities market. During and around the Investigation period, we have traded in various Scrips like Ahluwalia Contracts, Atlanta Limited, Ken Financial Services, Lok Housing, OK Play India Limited, Omnitech Infosolution, Ravinay Trading, Rossell Tea Limited, Shyam Star Gems, Sky Industries, Sundaram Multi pap, SVC Resources Limited, Take solutions Limited, Techno Electric & Den and Twilight Litaka Phar etc.. The same is provided in a tabular form as* ***Annexure 1.***

b. *We invest in securities market either by making application in the IPO or buying from the open market and later on we sell at an opportune time.*

c. *Further, buying and selling in the stock market is also carried out through the procedure specified by SEBI and stock exchanges, viz. off market and/ or on market through the electronic, anonymous and faceless trading platform.*

1. *As regards sale of shares of ATL, we would like to clarify that we sold the shares on electronic, anonymous and faceless trading platform of the stock exchanges which has been approved by SEBI. We further submit that we have told our broker to enter the orders on the anonymous trading platform of the stock exchanges and by no stretch of imagination we would be aware about the counter party.*

2. *Further, our volume in the scrip of ATL is only 0.15% of the total volume of shares traded during the investigation period which is a miniscule percentage to warrant serious allegation of fraudulent and unfair trade practice.*

3. *As regards to fund transfer from HDK International, we would like to state that we have received the funds in the ordinary course of business which was received through normal banking channels and for which full audit trail is available.*

4. *Further, no allegation of any connection whatsoever, even remote or otherwise, of ours has been alleged to be established with any of the entities to warrant any allegation of being part of scheme, artifice, device etc. and violate any provision of SEBI Act and/ or rules/ regulations framed thereunder.*

5. *The above establishes that SCN is bad in law and SEBI has transgressed its powers in issuing the said SCN which is without any basis and is based on surmises and conjectures.*

6. *The main allegations as contained in the SCN are:-*

   a. *ATL diverted the money raised through IPO to indirectly fund Raj who would further trade in the scrip of ATL from the funds received from ATL itself.*

   b. *Raj aided & abetted ATL in siphoning off the IPO proceeds & traded in the scrip with the help of funds indirectly received from ATL together in a fraudulent manner.*

   c. *It is submitted that apart from above, no allegation has been levelled against us to warrant violation of PFUTP Regulations.*

Our submissions to the allegations contained in SCN are as under:-

7. *At the outset and without prejudice to anything stated hereinafter, we deny all the allegations and findings made against us in the said notice, except to the extent specifically admitted by us. Nothing contained in the said notice may be deemed to*

be admitted by us by the reason of non-traverse or otherwise, save and except what is expressly admitted herein.

8. *We categorically deny that we have violated the provisions of section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI PFUTP Regulations.*

9. *We submit that we have bought 1,75,000 shares of ATL looking to the market trends on the electronic, faceless trading platform of the stock exchange wherein the counter party is not known and cannot be known due to nuances of electronic trading.*

10. *In so far as the allegation of receiving funds from HDK International, it is submitted that the same was in the nature of a loan for the period at the rate of interest of 9% which was duly paid back in tranches within a period of around 5 to 6 months. We submit that we received the funds from HDK somewhere in March 2011 and the same were repaid in August 2011. Further, interest at the rate of 9% was also paid to HDK through normal banking channels for which also complete audit trail is available. It is brought to your kind notice that all the funds received were in normal course of business. A copy of the ledger of HDK in our books for the period April 1, 2010 to March 31, 2012 receipt and payment of funds along with interest is collectively annexed hereto at **Annexure 2.** .*

11. *As regards source of funds of HDK it is submitted that we cannot be expected to have any knowledge of source of funds by HDK since we do not have any power or authority to enquire from them and we are also not concerned with the same. It is impossible for us to know that the source of funds of HDK is directly / indirectly from ATL. Further, the receipt of funds was in the normal course of business and no adverse inference can be drawn against us for the same as we are regular jobber/ investor in the securities market and deal in lot of scrips.*

12. *As regards transfer of funds to the trading member IFCI Financial Services Enterprises (hereinafter referred to as "IFCI"), it is submitted that IFCI was our broker and funds were transferred to them in the ordinary course of business sans any*

malafide intention. It is further submitted we have bought the shares through SEBI registered trading member on the electronic, faceless and anonymous trading platform of the stock exchange wherein the counter party is not known. We further submit that we have traded in the ordinary course of business and no adverse inference should be drawn against us for the same. In view of the same, we deny that we form part of circular trading pattern.

13. *It is submitted that we have told our stock broker to enter buy order on the anonymous trading platform of the stock exchanges and by no stretch of imagination we would be aware about the counter party.*

14. *We submit that at the time of dealing in the market through the faceless, electronic trading platform of the stock exchange, it is not possible to know the counter party and any kind of allegation of any connection is unfounded and baseless. We do not have the wherewithal to know the counter party and SEBI with all the wherewithal, sophisticated system at its disposal and having all the investigation powers can unearth the truth. With such background to connect us to the counter party is totally uncalled for, baseless and appears to be far - fetched. We would further like to submit that the allegation is totally flawed and inappropriate. The investigation has been carried out with complete non-application of mind and the allegation levelled are incongruous and unsustainable.*

15. *As regards the observation that movement of funds took place on same day i.e. March 10, 2011, it is submitted that there is no debarment by RBI or other banking regulations to transfer the funds on same day and same is allowed. Further, at that point in time we did not receive any alert / warning from any of the regulators.*

16. *We further submit that our volume in the scrip of ATL is only 0.15% of the total volume of shares traded during the investigation period which is a miniscule percentage to warrant serious allegation of fraudulent and unfair trade practice.*

17. *Further, there is no allegation of entering into self-trades, establishing new high price, reversal trade etc. and there is no allegation which establishes that our trade was done on the basis of funds received from ATL.*

18. *As regards to funds transferred by us to our trading member IFCI, we submit that the same was provided by us for investment in the capital market in the normal course of business. We reiterate the fact that we are a regular investor in Securities market. For the purpose of investment, we transfer funds to our trading member who further invests the amount for trading in various scrips. Henceforth, no adverse inference ought to be drawn based on the transfer of funds by us to our trading member.*

19. *We deny of having any nexus or connection with ATL or our trading member IFCI Financial Services Enterprises or HDK International in the matter of public issue for dealing in the scrip of ATL.*

LEGAL SUBMISSIONS:

20. *We would like to bring to your kind attention the following case laws:-*

a. *Hon'ble Securities Appellate Tribunal, in the case of* ***Samir Arora Vs. SEBI*** *(2005) 59 SCL 96 (SAT) has held that where activities like insider trading and fraudulent trade practices are concerned, "charges must be proved based on cogent materials and in accordance with law."*

b. *Hon'ble Securities Appellate Tribunal in its order dated 30.09.2003 (Appeal No. 9/2003) in the case of* ***KSL & Industries Ltd Vs. SEBI*** *has held that "I do not find any material on record in support of the said charge. A wild allegation of market manipulation, in particular the charge of fraudulent action unsupported with convincing evidence is not to be sustained.... Fraud cannot survive on mere conjecture and surmises."*

21. *We submit that we have been a law abiding company & a regular and honest tax payer. We submit and say that we have always followed all the procedures, as stipulated by any regulatory authority, follow all rules/ regulations/ instructions etc.*

issued by any government agency, and our intention has always been to comply with rules/ regulations/ filings etc. We further submit that we have not been penalized by any regulatory authority and have got clean track record till date. We further undertake that in future also we shall comply with all Acts, rules, regulations etc., in letter and in spirit, and would not violate any of the provision of any Act, rules, and regulations etc. of any regulatory authority.

22. *We further repeat, reiterate and submit that we have not played any role to manipulate the price of the scrip or received funds from ATL to invest in the public issue. We deny everything to the contrary and inconsistent therewith. We once again deny that we have violated section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1) and 4(2)(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations") and therefore, we submit that we are not liable for any penalty under Section 15HA of the Securities and Exchange Board of India Act, 1992 or any other law in force.*

23. *It is further submitted as follows:-*

    a. *That we have neither earned any disproportionate gain nor gained any unfair advantage;*
    b. *That no harm has been caused to any investor nor any loss has occurred to any investor; and*

That the default, if any, is not repetitive.

<u>Letter dated October 29, 2018:</u>

1. *We have submitted our captioned reply vide our letter dated October 05, 2018. At the outset and for the sake of brevity, we repeat and reiterate whatever is said in our captioned reply as if the same are set out herein extenso and reproduced herein.*

2. *Further, vide this letter we are making following further submissions in the matter of Acropetal Technology Limited (hereinafter referred to as "ATL"). Needless to state that these submissions are in addition to and in continuation of our earlier reply.*

3. *It is reiterated that it has been alleged in the SCN that "since the aforementioned entities (who traded in the scrip of ATL) did not use their own funds for trading, their trades are not considered as genuine. These trades acted as a fraud on the investors by creating a misleading appearance of trading in the securities market". Hence, the main allegation is as follows:-*

a. *That trades carried out by Raj are not considered as genuine since they did not use their own funds.*
b. *As these trades were not out of their own funds, these acted a fraud on investors by creating a misleading appearance of trading.*

4. *As regards the above allegations, it is submitted that there is no provision in SEBI Act, PFUTP Regulations or any other Regulation of SEBI, Indian Contract Act or any other law for time being in force which prohibits trading out of borrowed funds. This establishes that a sweeping allegation has been made in the air which is devoid of merit.*

5. *With reference to para 13 of our reply dated October 5, 2018, it is clarified that we received the funds on 10th March, 2011 and the same were repaid in tranches starting from August 2011 and the last payment made on 30th March, 2014. Further, the due interest on loan was also paid through proper banking channels. The copy of the ledger account of HDK for the F.Y. 2011-12 to 2013-14 along with T.D.S certificate for interest paid is enclosed collectively as* ***Annexure 1.***

6. *We further submit that we keep on raising funds on short term basis as part of routine business activity and even in FY 2011-12, we have raised funds from various entities including HDK International Private Limited (hereinafter referred to as "HDK").*

7. *We submit that we received the funds amounting to Rs. 1,85,00,000 (One Crore and eighty five lakhs) from HDK International Private Limited on 10th March, 2011. However, the shares of ATL were bought on 16th March, 2011. Further, only Rs. 1,25,00,000 (One crore and twenty five lakhs) was paid by us to IFCI Financial Services on 10th March, 2018 that too to clear the debit balance of Raj with IFCI . We submit that only part of the funds received from HDK, were used in the securities market, however, none of the funds received from HDK were used to buy the shares of ATL. We submit that Rs. 1.25 crore was transferred to IFCI, to clear off the debit balance of Rs. 1,23,60,259/-, which was payable to IFCI from 25th February, 2011. A copy of the ledger of IFCI Financial Services*

Ltd for the period 1st February, 2011 to 31st March, 2011 is enclosed at ***Annexure 2****. This establishes that the SCN is misdirected towards us and no evidence has been adduced/ considered before levying a serious charge of fraudulent and unfair trade practice.*

8. *Further, as per the SCN, it has been alleged that Raj made a net purchase of 1,75,000 shares of Acropetal Technologies Limited during the Investigation Period. However, we would like to submit that the shares of Acropetal Technologies Limited have been purchased by us on various dates viz. 16th March, 2011, 21st March, 2011 and 29th March, 2011. The shares bought by us on 29th March were after the Investigation period wherein we bought a total of 1,75,000 (One lakh seventy five thousand) shares and sold them on the same day. We bought the above shares and hoped to make profit in the ordinary course of business. However, the price of scrip moved in opposite direction of our expectations and we had to incur a loss of Rs 1.08 Crores (One Crore eight lakhs) approximately. Hence, no fraudulent or unfair trade practice can be alleged against us and no adverse inference should be drawn against us because of this. The SCN is deficient with lack of proofs and evidences. The details of our trading in the scrip of ATL in a tabular form is enclosed hereby as* ***Annexure 3****, a snapshot of which is as follows:*

Serial No.	**Date**	**Buy**	**Sell**	**Net**
1	16th March, 2011	1,15,000	-	1,15,000
2	21st March, 2011	60,000	-	1,75,000
3	29th March, 2011	1,75,000	-	3,50,000
4	29th March, 2011	-	1,75,000	1,75,000
5	5th April, 2011	-	1,75,000	Nil

9. *We submit that shares of ATL were purchased on 16th March, 2011 and it can be observed from the ledger of IFCI (enclosed at* ***Annexure 2****) in the books of Raj that to purchase the shares of ATL either the credit balance available with broker was utilized or other shares were sold. A snapshot of it is provided as under:*

Date	**Particulars**	**Debit**	**Credit**
16th March, 2011	Opening balance	17,30,557	-

16th March, 2011	Purchases (shares of ATL)	-	1,05,60,614
16th March, 2011	Sales	24,00,328	-
16th March, 2011	Brokerage & other charges	-	19,570
16th March, 2011	Sales	15,71,560	-
16th March, 2011	Brokerage & other charges		2,371
16th March, 2011	Purchases		15,46,500
16th March, 2011	Sales	45,21,127	
16th March, 2011	Brokerage & other charges		9,147
16th March, 2011	-	1,02,23,572	1,21,38,202
16th March, 2011	Closing balance	19,14,630	-
	-	1,21,38,202	1,21,38,202
18th March, 2011	Opening Balance	-	19,14,630
18th March, 2011	Sales	17,66,055	-
18th March, 2011	Brokerage & other charges	-	3,403

10. *We submit that Raj and/or its Directors are not connected/related directly or indirectly to ATL and /or its Directors/Promoters in any form whatsoever. We further submit that Raj and/or its Directors are not connected/related directly or indirectly to HDK and /or its Directors/Promoters in any form whatsoever except for the business purpose. We reiterate that the funds were received from HDK in the ordinary course of business and no adverse inference ought to have been drawn against Raj for the same.*

11. *As regards to clarification/details sought during the course of Hearing, it is submitted that:*

a. *Copy of the ledger account of various parties from whom we have received funds for the period F.Y. 2008-09 to 2012-13 is enclosed collectively at* ***Annexure 4.***

b. *Copy of ledger details for HDK from 2 (two) years prior to the date of listing of the shares of Acropetal Technologies Ltd and 2 (two) years after the date of listing for the period 10th March, 2011 to 31st March, 2014 are enclosed at* ***Annexure 5.***

12. ***LEGAL SUBMISSION***

a. *We would like to invite your attention to the order passed on August 30, 2016 by Hon'ble SAT in Appeal No. 144 of 2014 filed by PGEL and its directors wherein inter-alia it was observed that "The charge relating to violation of PFUTP Regulations is a serious charge and hence a higher degree of proof is required to sustain it. In the instant case, such a charge has not been established against the Appellant by adducing cogent reasoning and convincing evidence. Furthermore, in this context, it is pertinent to note that the Appellant undoubtedly advanced various amounts to various entities for different purposes viz for purchasing raw materials, land, machinery, ICD advance etc. These transactions, qua the Appellant cannot, by themselves, be treated as link to the series of transactions which might have led to the purchase of the Appellant's share in the IPO. ....There is no commonality of directors, or registered addresses or any other incidents which can lead to such an inference that the Appellant was involved in the transfer of funds to certain such entities which, inter-alia, bought the Appellant's share in the IPO. Further, invoices and other documents have been produced by the Appellant for the purchase of raw materials and equipments required to run the business, and their validity is not in question. It is pertinently noted that most of the money which the Respondent alleges to have been transferred has been returned to the Appellant. The Respondent has fairly submitted that the Auditor appointed by SEBI itself has in its report dated January 25, 2016 noted that an amount of Rs. 80 crore has been successfully recalled by the Appellant and the Respondent has scrutinized the utilization thereof. It is also a fact that the Appellant has already recalled moneys recoverable owing to ICDs, cancelled contracts pertaining to land purchase, except an amount of Rs. 3.77 crore as explicated hereinabove with respect to which the Appellant has initiated the winding up of the company called Supreme. It shows the respect for and earnest desire of the Appellant to abide by SEBI's regulatory directions."*

b. *The above order passed by Hon'ble SAT has been relied upon by one of the Ld. Adjudicating Officers while passing order in the matter of PG Electroplast Limited (Adjudicating Order No. EAD-2/DSR/RG/686-781/2017) and has not levied any penalty on various entities.*

13. *It has been alleged in the Show Cause Notice that the aforementioned entities (which includes Raj) did not use their own funds for trading and hence there trades are not considered as genuine. It has never been SEBI'S case that our trading per se in violation of SEBI Act and/or PFUTP Regulations.*

14. *In view of the same, it is submitted that as explained above, the funds received from HDK were not utilized to buy the shares of ATL. As is brought out in the previous paragraphs, we have utilized our own funds to buy the shares of ATL. Hence the allegation in the Notice that our trades are not considered as genuine since we have not used our own funds does not stands established and is unfounded. This, prima facie, establishes that the SCN is void ab initio. It is further submitted that the Show Cause Notice is vague, baseless and based on mere surmises and conjectures and is contrary to the factual position on record.*

15. *While considering our submissions it may be noted that we have a clean track record in terms of compliance. Never in the past has any action been taken against us by any regulatory authority including SEBI. We are a Company which was incorporated in the year 1995 and presently carrying on the business of investment and real estate. Copy of our latest balance sheet is being annexed hereto as* ***Annexure 6****.*

Noticee No. 8- Dirva Trade Impex Pvt. Ltd.

i. Pursuant to affixture of SCN on August 04, 2018. Dirva did not replied to SCN.

ii. Vide hearing notice dated September 27, 2018, Dirva was given an opportunity of hearing on October 10, 2018.the said HN was not affixed.

iii. Thus, Soft copy of the SCN was uploaded on SEBI website- www.sebi.gov.in for the information of the Noticee and a Notice was published in two newspapers one in a daily newspaper having nationwide circulation and another in a newspaper having circulation in the language of the region where that Noticee was last known to have resided or carried on business i.e., in Times of India, Mumbai edition and Navbharat times dated 18.10.2018 to appear for hearing on 30.10.2018. Vide the aforesaid HN, the Noticee was also advised that reply to SCN should reach the Adjudicating Officer within 14 days from the date of this publication in terms of the SCN.

iv. Noticee failed to appear for hearing on October 30, 2018.

v. In the interest of natural justice and in terms of Rule 4 of Adjudication Rules, an opportunity of personal hearing was again accorded to Noticee through WebEx platform due to Covid-19 Pandemic on October 07, 2021 vide hearing notice dated September 08, 2021. Hearing notice returned undelivered. In this regard, soft copy of the hearing notice was uploaded on SEBI website- www.sebi.gov.in for the information of the Noticee, a Notice was published in Times of India, Mumbai edition and Navbharat times dated 29/10/2021 to appear for hearing on November 17, 2021. Vide the aforesaid Notice, the Noticee was again advised that reply to SCN should reach the Adjudicating Officer within 14 days from the date of this publication in terms of the SCN.

vi. However, I note that, Dirva failed to appear on scheduled date and time of hearing and did not made any reply to SCN till the date of this order.

17. I note that despite the SCN and hearing notices having been duly served upon the Noticee no. 2,3,5, 6 and 8, these Noticees have failed to submit their reply to the SCN till the date of this order and Noticee no. 2,3,5, 6 and 8 also failed to attend the hearing on scheduled date and time.

18. Undersigned undertook several efforts to deliver the hearing notices to Noticees during lockdown in the scenario of ongoing COVID-19 pandemic where Hearing Noticees sent to Noticees through SPAD returned undelivered. In view of the above, I am of the opinion that the SCN and Notices of hearing have been duly served upon all the Noticees. Noticee no. 2,3,5, 6 and 8 failed to reply to the SCN till the date of this Order and also failed to avail the opportunity of personal hearing. Noticee no. 1 and 4 failed to reply with respect to allegations against them as mentioned in the SCN despite several opportunities granted to them. The principle of natural justice has been followed in the matter, as enough

opportunities were provided to the Noticees to reply to the SCN and appear for hearing. Therefore, I am inclined to decide the matter with regard to these Noticees taking into account the evidence / material available on record.

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

<u>SEBI Act, 1992</u>

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

12A. *No person shall directly or indirectly—*

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

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

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

<u>PFUTP Regulations, 2003</u>

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) *buy, sell or otherwise deal in securities in a fraudulent manner;*

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

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

20. it may be noted that a separate investigation (hereinafter referred to as "other investigation") was carried out by SEBI in the IPO of ATL to ascertain:
    a) Bidding process in the IPO of ATL,
    b) Examination of disclosures made by the company in the offer documents / prospectus and deviations from objects of issue, if any,
    c) Examination of fund flows from IPO proceeds.

21. I note that instant proceedings deal with respect to examination carried out by SEBI into trading activities of certain entities in the scrip of Acropetal Technologies Limited. Since the said examination also includes the entities and fund movements which were also examined during 11B proceedings and Adjudication proceedings in the related matter of IPO of ATL. Thus, I would also like to place reliance on the findings of Hon'ble Whole time Member of SEBI (WTM) in its order dated September 27, 2019 (hereinafter referred to as "WTM

order/11B order") and order dated March 31, 2022 of Adjudicating Officer of SEBI (AO Order) in this regard.

22. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees, I record my findings hereunder.

23. I note from the SCN that, it has been alleged that ATL has diverted the money raised through IPO to indirectly fund SV, Raj and Dirva who traded in the scrip of ATL. Hence, ATL and the entities who aided and abetted ATL in siphoning off of IPO proceeds and acted as layers/ conduits in the movement of funds and diversion of proceeds (i.e. Maars, Balaji, HDK, Viraj) and the entities who eventually traded in the scrip with the help of funds received indirectly from ATL (i.e. SV, Raj and Dirva) together acted in a fraudulent manner with the investors of ATL. Since the aforementioned entities (who traded in the scrip of ATL) did not use their own funds for trading, their trades are not considered as genuine. These trades acted as a fraud on the investors by creating a misleading appearance of trading in the securities market and thereby these entities have violated the provisions of section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) of PFUTP Regulations.

24. Hon'ble Whole time Member of SEBI (WTM) vide order dated September 27, 2019 (hereinafter referred to as "WTM order") and Adjudicating Officer of SEBI (AO) in its order dated March 31, 2022 *inter-alia* concluded that:

a) ATL deviated from the objects of the issue and had not utilized the IPO proceeds for the objects set out in the prospectus.

b) Eleven entities including Maars, Viraj and HDK have acted hand-in glove with ATL and were party to the actions and deeds of ATL to divert the IPO money and not deploying the IPO proceeds for stated objects of issue as disclosed in the prospectus of ATL.

25. Further, with respect to fund transfer to Maars, HDK and Viraj by ATL, I note the following from Hon'ble WTM order and AO order:

FUND TRANSFER TO MAARS BY ATL:

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. 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.

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:

....

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.

From the above, it is evident that *transfer of `40 crore to Maars was not genuine and 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.*

FUND TRANSFER TO HDK BY ATL

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.

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.

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.

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.*

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.*

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.

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. 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.

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 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.*

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.

The IR further observes that after ATL received ` 25 crore from HDK 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.

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.

Thus, in view of the aforesaid, it is evident that, transfer of Rs. 14.5 crore to HDK International Pvt Ltd (hereinafter referred to as "HDK") (Account no. – 0001-CA0309-050 with Indusind Bank) on 10/03/2011 by ATL was not genuine and HDK aided and abetted ATL in siphoning off of IPO proceeds.

FUND TRANSFER TO VIRAJ BY ATL

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.

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.*

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.

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.

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.

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.

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.

From the above, it is evident that *transfer of `5 crore to Viraj was not genuine and Viraj 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.*

26. It may be noted from above that, ATL diverted the money raised through IPO proceeds to Maars, HDK, Viraj and the same has been held in aforesaid Hon'ble WTM order and AO order and therfore,they have been restrained from accessing the securities market for certain period as stated in Hon'ble WTM order and also been levied monetary penalty.

27. However, I note that instant proceedings deals with the allegation of Violation of the provisions of the PFUTP Regulations by Noticees for creating a misleading appearance of trading in the securities market .

28. I note that the said Allegation as mentioned in the SCN is on the basis of fund transfer :

a) From ATL to MAARS, then from MAARS to Balaji and then from Balaji to bank accounts of SV who traded in scrip of ATL
b) From ATL to HDK,then from HDK to RAJ, who traded in scrip of ATL.
c) From ATL to Viraj, then from Viraj to Dirva, who traded in scrip of ATL

29. With respect to fund transfer from HDK to Raj, Raj has submitted in its reply that it took loan from HDK in March 2011 and the same were repaid in August 2011 Even if it is accepted that Raj took the loan from HDK in March 2011 and the same were repaid in August 2011. i note that Except copy of the ledger of HDK for the period April 1, 2010 to March 31, 2012 and T.D.S certificate for interest paid , Raj has failed to provide copy of Loan agreement or bank account statements or the purpose for which Loan was taken. I note that same submissions were made by HDK during 11B proceedings and Findings of Hon'ble WTM in this regard in 11B order are as follows:

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.

30. I note that, even HDK did not submitted the copy of loan agreement or any correspondence with Raj to whom it has advanced Rs. 14.5 crores 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, in view of the aforesaid, I don't find merit in the submission of Raj that the receipt of funds was in the normal course of business.

31. I also note that Raj has cited various case laws and judgments in its reply. On perusal of the same, I note that ratio of facts and circumstances of aforesaid cases are not applicable in the instant matter.

32. However, since the instant proceedings deals with the violation of the provisions of the PFUTP Regulations by Noticees for creating a misleading appearance of trading in the securities market. Thus, in this regard, I note that, there is no evidence to suggest employment of any device or scheme or artifice by SV, Raj and Dirva to defraud or induce any person to trade in the scrip or to indulge in market manipulation. Further, there is no material on record to suggest that any single transaction done by them as structured/circular /reversal trades with regard to the allegation of misleading appearance in the securities market.

33. Also, it cannot be inferred that such trades executed by SV, Raj and Dirva created a false and misleading appearance of trading or have any impact on the price of the scrip or on trading on the day of listing. In view of the said facts, the allegation of misleading appearance of trading in the securities market by them is not sustainable merely on the basis of fund transfers among Noticees.

34. I also note that, SCN does not allege any manipulative or fraudulent trades done by SV, Raj and Dirva who traded in the scrip of ATL or employing any other unfair trade practice during the course of such trading by SV, Raj and Dirva . Further, there is no material available on record which shows that Funds have been round-tripped back to ATL by SV, Raj and Dirva who have been alleged to have traded in the scrip with the help of funds received indirectly from ATL.

35. Thus, in the absence of any allegations regarding manipulative, fraudulent or unfair practices during the course of such trading, mere trading done by SV, Raj and Dirva does not ipso facto make such trades fraudulent or unfair trade practice as defined under the PFUTP Regulations.

36. In view of the same, I accept the contentions made by Raj and hold that the allegation of misleading appearance of trading in the securities market by the SV, Raj and Dirva does not stand established and hence the charge of violation of the provisions of the (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003.

37. As the charge of violation of the provisions of the (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 by SV, Raj and Dirva does not stand established. Therefore, the charge on ATL, Maars, Balaji, HDK and Viraj for creating a misleading appearance of trading in the securities market also does not get established.

38. Thus, in view of the aforesaid, I conclude that, there is no evidence, sufficient enough available on record with clarity and conviction to establish that Noticees have created a misleading appearance of trading in the securities market. Therefore, in absence of inducement, fraud is not proved nor there was connivance or collusion by the Noticees who traded in the scrip of ATL with the ATL. Thus, the violation of section 12A(a), (b) and (c) of SEBI Act read with Regulation 3(a), (b), (c), (d), 4(1), 4(2)(a) of PFUTP Regulations is not established against Noticees and therefore, Issues II and III also do not merit consideration.

ORDER

39. After taking into consideration all the facts and circumstances of the case and material available on record Adjudication proceedings initiated against the Noticees vide SCN dated July 05, 2018 is disposed of without any penalty.

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

Date : April 13, 2022
Place : Mumbai

V.K. Verma

Vijayant Kumar Verma
Adjudicating Officer