BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.: Order/VV/NK/2022-23/16600]

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

In the matter of Acropetal Technologies Limited

BACKGROUND

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

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

3. Adjudication Order No. EAD-9/VKV/NK/9857/2020-21 was passed on December 18, 2020 in respect of the Noticee, by which a penalty of Rs.5,00,000/- (Rupees Five Lacs only) on the Noticee viz. Saffron Capital Advisors Pvt. Ltd. in terms of section 15HB of the SEBI Act, for the violation of the provisions of regulation 60(7)(a) and 64(1) of ICDR Regulations, regulation 13 r/w clause 1, 2, 3, 4, 6, 7 and 20 of Code of Conduct for merchant bankers specified under Schedule III in Merchant Bankers Regulations(hereinafter referred to as 'Adjudication order').

4. Thereafter, Hon'ble Whole Time Member (hereinafter referred to as 'WTM') of SEBI vide order dated June 29, 2021 (hereinafter referred to as 'WTM Order') exonerated the Noticee under the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 on the same set of allegations against the Noticee.

5. The Noticee appealed the abovementioned Adjudication Order before the Securities Appellate Tribunal ("SAT"), and vide order dated December 09, 2021 in SAT Appeal No. 94 of 2021. Hon'ble SAT has set aside the impugned adjudication order and restored the matter to the file of the Adjudicating Officer to pass fresh order after considering order of the WTM dated June 29, 2021.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. The allegations levelled against the Noticees in the Show Cause Notice dated December 15, 2017 ("SCN") are summarized as follows:-

1. *On page 64 of the prospectus, it was disclosed 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, ATL, vide its letter dated 02/05/2016, had informed that said amount of ` 7 crore was transferred to M/s Equastone Properties Pvt Ltd (Equastone) as advance towards construction of software development center. ATL has further submitted that subsequently said project was cancelled and ATL received back the advance paid to Equastone. In this regard, it was observed that Equastone was a related entity of ATL / Shri Ravikumar.*

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

3. *It was observed that Book Running Lead Manager (hereinafter referred to as "BRLM") of ATL, Saffron Capital Advisors Private Limited (hereinafter referred to as "Saffron") had submitted due diligence certificate w.r.t the IPO of ATL.*

4. *Saffron, as BRLM to the public issue of ATL has failed to do independent verification. It is alleged that Saffron failed to exercise due diligence while ensuring the veracity and adequacy of disclosure made in the prospectus and had also failed to perform its duties as mentioned under various clauses of Code of Conduct for Merchant Bankers specified under Schedule III in Merchant Bankers Regulations.*

5. *Saffron is, therefore, called upon to show cause as to why an inquiry should not be held against it and penalty be not imposed under section 15 HB of SEBI Act for the alleged violation of regulation 60(7)(a) and 64(1) of ICDR Regulations and regulation 13 read*

with Clause 1, 2, 3, 4, 6, 7 & 20 of Code of Conduct for Merchant Bankers specified under Schedule III in Merchant Bankers Regulations."

7. Noticee was provided with an opportunity for submitting additional replies and an opportunity of personal hearing through WEBEX considering the ongoing COVID-19 Pandemic in the interest of natural justice and in order to conduct inquiry as per Rule 4 of the Adjudication Rules vide hearing Notice dated December 28, 2021.

8. Noticee vide email dated January 12, 2022, authorized its representatives to attend the personal hearing. The Authorized Representatives ("**ARs**") of the Noticees appeared before me on January 13,2022 at 11:00 AM and reiterated the submissions made by the Noticee vide letter dated January 11, 2018 & November 13, 2020. Further, ARs also referred to findings of Hon'ble WTM in her order dated June 29, 2021 in respect of Saffron Capital Advisors Private Limited in the matter of Acropetal Technologies Limited

9. Noticee vide letter dated January 11, 2018 and November 13, 2020 has *inter-alia* submitted the following :

   a. *It is a fact that the Company took a bridge loan of Rs.20 crores, the details of which were prominently disclosed in Page 63 of the Red Herring Prospectus dated February 02, 2011 filed with SEBI and again on page 63 in the Prospectus. The details of the usage of the funds was also disclosed in the RHP and Prospectus as Rs.7 crores towards construction of building and the remaining Rs.13 crores towards Working Capital. Both the uses are clearly as per the objects of the issue.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. Equastone not classified as a Related Party:

<u>*Our submission:*</u>

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

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

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

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

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

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

"(m) Related Party Transaction

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

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

Attention is also drawn to Annexure 18 appearing on Page 168 / 169 of the Red Herring Prospectus, where the statutory auditor <u>has listed the Related Parties and the details of the transactions with them in accordance with AS -18</u>. It is an expert certification and based on a very comprehensive and exhaustive definition of Related Party and Related

Party Transactions. Equastone neither figures anywhere as either Related Party or in Related Party Transactions

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

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

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

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

e) Promoter & Promoter group matrix submitted by the Company

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

II. Working capital of Rs 13 crores:

Our submission:

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

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

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

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

We summarise the above as:

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

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

<u>Concluding submission</u>

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

11. As hearing / inquiry in this matter is concluded, therefore, after taking into account the allegations, submissions of the Noticee, Direction of Hon'ble SAT, Order of Hon'ble WTM in the matter and evidences / material available on record, I hereby proceed to decide the case on merit.

<u>ISSUES FOR CONSIDERATION AND FINDINGS</u>

12. I have carefully perused the oral and written submissions of the Noticee, Direction of Hon'ble SAT, Order of Hon'ble WTM in the matter and the documents available on record. The issues that arise for consideration in the present case are:

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

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

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

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

Relevant provisions of ICDR Regulations

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

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

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

64. Due diligence.

(1) The lead merchant bankers shall exercise due diligence and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents.

Relevant provisions of Merchant Bankers Regulations:

13. Code of conduct.

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

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

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

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

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

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

Clause 5..............................

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

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

Clauses 8-19..

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

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

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

<u>FINDINGS</u>

15. Hon'ble SAT vide its order dated December 09, 2021 against the appeal to AO order dated December 18, 2020 in the captioned matter held that:
"The *matter is remitted to the AO to pass a fresh order after considering the order of the WTM dated June 29, 2021 and after giving an opportunity of hearing to the appellant."*

16. I note that, Hon'ble SAT in its order dated December 09, 2021 has directed AO to pass fresh order taking into consideration *order of the WTM dated June 29, 2021.*

17. I have perused order of the WTM dated June 29, 2021, in the said WTM order, I note that, adjudication order dated December 18, 2020 find out the failure of BRLM to do independent verification of Equastone and bank statements of ATL before submitting the due diligence certificate with regard to IPO of ATL. While Hon'ble WTM has examined the existence of red flags which would have alerted Noticee to further delve into statements and to do further independent profession judgement and due diligence looking into the bank statements of ATL. Thus, in light of the same, following has been *inter-alia* mentioned in the WTM order:

a) <u>With respect to Related Party Transaction Disclosure</u>

"13. As per ICDR Regulations, Issuer Company shall disclose transaction with related party in accordance with the requirements of Accounting Standard (AS 18) in the prospectus as per Part A of Schedule VIII IX (B) (12) which brings out that information with respect to transactions or loans between the issuer with an enterprises in which a

substantial interest in the voting power is owned, directly or indirectly by any person (close members of such individuals' families), over which such a person is able to exercise significant influence and includes enterprises owned by directors or major shareholders of the issuer.

14. It was also noted form the MCA website, it was noted that Ms. Malini Reddy, wife of Promoter/CMD of ATL, Shri Ravikumar, and also in the promoter group of ATL, was the major Promoter of Equastone and was holding 90% shareholding and additionally other Directors were also employees of ATL, namely Shri Prashanth Kumar and Shri Madhava Reddy. From the KYC details of Equastone submitted by United Bank of India, it was observed that the authorized signatory to the bank accounts of Equastone was Shri D Vedavyasa Rao, Head- Accounts –ATL. At the investigation stage, Ms. Malini Reddy was advised to confirm her role in Equastone. She had submitted that in November, 2006, she had resigned as the Director of Equastone and transferred the entire shareholding in Equastone to Shri Prashanth Kumar. She had also submitted a copy of Annual Return of Equastone for the year 2007 which she claimed to have filed with MCA showing transfer of shares of Equastone in favour of Shri Prashanth Kumar. However, it is observed from the MCA website that the said filing was done only on July 25, 2011. Therefore the contention of Ms. Malini Singh on the transfer of the share during 2007 is not acceptable. I also note that, as per disclosure in the prospectus in Annexure 18, Ms. Malini Reddy was related party to ATL in the capacity as Promoter Group (Immediate Relative of promoter/CMD).

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

16. The Noticee has submitted that, Ms. Malini Reddy was not a director of Acropetal when the issue was being handled / DRHP was being prepared / RHP was filed with the ROC and SEBI. Noticee was informed that she is more a housewife and never takes part in any company activities. Since she was not a director or a promoter of the company and she was only part of promoter group, that too because of definition under the ICDR Regulations, 2009, hence there was no ground to take her DIN Number or verify further. In the absence of a DIN no data can be procured from the MCA Website and it is impossible to know the companies with which she was associated, as the MCA website was different during 2010. I note that the Noticee has also contented that, it made 5 level of due diligence through verifying Annual Report for 5 years, Minutes of the Board Meeting for 5 years, Statutory Auditor's Certificate/Statement and declaration of management of ATL and promoter and promoters group, where no reference or disclosure of RPT with Equastone was made nor any material or circumstance was on record to raise any red flag. Noticee has also submitted that as Equastone was only appearing as top 10 shareholder with 3% on pre-issue capital and since the holding was less than 5% no further inquiries was made.

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

18. *Apart from the due diligence through Annual Report for 5 years, Minutes of the Board Meeting for 5 years, Statutory Auditor's Certificate/Statement and declaration of management of ATL and promoter and promoters group, Noticee has also submitted the interest certificate of Mr. D. Ravi Kumar under section 299 of the companies Act 1956, obtained during the due diligence. I note that section 299 of the Companies Act 1956 mandate "Procedure, etc., where director interested" containing "Disclosure of Interests by Director" which read as, Every director of a company who is in any way, whether directly or indirectly, concerned or interested in a contract or arrangement, or proposed contract or arrangement, entered into or to be entered into, by or on behalf*

of the company, shall disclose the nature of his concern or interest at a meeting of the Board of Directors. Further section 297 of the Companies Act 1956 requires to obtain Board's sanction to be required for certain contracts in which particular directors are interested mentioning that, Except with the consent of the Board of Directors of a company, a director of the company or his relative, a firm in which such a director or relative is a partner, any other partner in such a firm, or a private company of which the director is a member or director, shall not enter into any contract with the company - (a) for the sale, purchase or supply of any goods, materials or services. However, as per the interest certificate given by Mr D. Ravi Kumar for FY ending 31/03/2010 to the Board of Directors of the Company, no declaration of Equastone as interested entity through Ms. Malini Reddy was made.

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

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

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

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

21. Based on the above facts it is noted that Mr. D Ravi Kumar has deliberately concealed the details of Equastone as related entity and Ms. Malini Reddy connection to the Equastone. Further based on the above there are no red flags raised for the Noticee to further delve into statements on the related entities and related party transactions.

b) With respect to Wrong Disclosure on Utilisation of 13 Crores from the Bridge Loan:

"22… ..At this stage, it needs to be seen whether any red flags existed for the transfer of Rs.13 crore to abroad companies as not genuine and therefore the disclosure as appearing in the prospectus in this respect was false. In this regard, perusal of the prospectus shows that ATL has disclosed that the working capital requirement is majorly towards sundry debtors, other current asset and creditors and provisions. Therefore, given the statement by the ATL and Auditor in the prospectus enumerating the purpose for which working capital is needed, it is difficult to conclude on preponderance of probability basis, that there existed red flags on the aspect of whether utilisation of the bridge loan is in the nature of working capital requirement or not. I also note that the Noticee has submitted that the deployment of funds certificate was also provided by the Statutory Auditor which classified the utilization of the funds for working capital. Further, I also note that there are no red flags brought out through the Minutes of the Board Meeting, Statutory Auditors Report, Annual Report and various undertaking/certification of KMP or Auditors, with respect to the 13 crores utilisation during the IPO opening, warranting any further verification. I am of the view on preponderance of probability basis, that no red flags were noticeable in the given circumstances, throwing themselves up through the materials presented before the Noticee. Therefore, in view of those circumstances, this did not lead the Noticee to look at the bank statement for further verification. Therefore, it is difficult to conclude that there were red-flags which could have alerted the Noticee to do further independent profession judgement looking into the bank statements.

23. At this juncture, it is relevant to mention and rely the Hon'ble SAT order in the matter of SEBI vs Almondz Global Securities Ltd. dated 13.05.2016, where the roles and responsibility of the merchant banker, requirement of due diligence, and independent verification has been determined in quite similar matter. The relevant extract of the Hon'ble SAT order is reproduced as follows; ….. It is settled law that due diligence means reasonable diligence expected from a Merchant Banker. A Merchant Banker cannot be expected to start a due diligence exercise with a presumption of fraud or mischief to be committed by a company whose IPO is to be issued through the Merchant Banker. A Merchant Banker cannot be expected to act like an investigating agency and start with a note of suspicion as regards the bona fides of the company, on whose behalf it is entrusted with the task of drafting and preparing the DRHP, RHP and the Prospectus, etc. After the signing of a Memorandum of Understanding by the MB with the Issuer Company to draft and finalise the offer documents required for the IPO, a relationship of trust and confidence ensues between the two and cannot be unilaterally breached by any of the parties from the date of signing of the Memorandum of Understanding till the conclusion of the IPO……. ……The Issuer Company is primarily responsible for making complete and accurate disclosures in the Offer Documents through the MB. Undoubtedly, the MB has to employ its own independent Due Diligence, but in effect an MB relies upon the information / documents / records furnished by the Issuer Company to be included in the Offer Documents at various stages of the IPO. It is pertinent to mention here that the MB will conduct its due diligence based on the material brought before it by the Issuer Company, but it cannot be expected to perform this duty in a vacuum when information is not made available to it. "…This takes us once again to the very principle of due diligence. The diligentia that is expected of a Merchant Banker in a given case is such care as would be taken by a reasonable person. It would be the diligence or care a reasonable person would employ in a given situation. Degree of such care or diligence would, undoubtedly, differ from case to case and no straight-jacket formula can be prescribed by law. As already noted, the principle of due diligence is, by nature, incapable of being defined in precise *terms and has, therefore, been left open or flexible to be determined in each case as per the existing facts and circumstances. Hon'ble Supreme Court in the case of "Chander Kanta Bansal Vs. Rajender Singh Anand reported in 2008 (5) SCC 117"…. that due diligence in law means reasonable diligence and doing "everything reasonable, not everything possible".*

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

6. I note that, Regulation 60(7) of ICDR Regulations makes it obligatory on the issuer to not issue any advertisement or research that is not true, fair and it should not be manipulative or deceptive or distorted. Schedule VIII clearly indicates that the means and sources of financing including details of bridge loan and related party transactions have to be disclosed in the Prospectus. In this regard, during investigation, I note that, ATL has submitted certain documents and made certain claims for which SEBI sought further clarification and documents from ATL. However, ATL was not been able to substantiate its claims with documentary evidence and wherever documentary evidence has been submitted by the ATL, 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 by ATL then it casts a shadow of doubt on the documents

submitted by the company to the Noticee and same has also been found out in the order of Hon'ble WTM dated September 27, 2019 and Adjudication order dated March 31, 2022. I also note that, Prospectus does not disclose that the financial transaction with Equastone was a related party transaction.

7. In view of the foregoing even though the onus is on the issuer company to make the disclosure as per Clause (IX)(B)(12) (a)(v) Part A of Schedule VIII of ICDR Regulations, Regulation 64 of ICDR Regulation mandates the BRLM/Merchant Banker that it, shall exercise due diligence and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents.

8. In the context of the aforesaid observations of Hon'ble SAT order, I have carefully gone through the order of Hon'ble WTM where the existence of any red flag was there to indicate failure of due diligence on part of Noticee to detect that Equastone is a related party at the relevant point of time was examined. In this regard, I note that, Hon'ble WTM has held that, "*Mr. D Ravi Kumar has deliberately concealed the details of Equastone as related entity and Ms. Malini Reddy connection to the Equastone. Further based on the above there are no red flags raised for the Noticee to further delve into statements on the related entities and related party transactions*"

9. Further, with respect to Wrong Disclosure on Utilisation of 13 Crores from the Bridge Loan, I note that Hon'ble WTM has *inter-alia* stated that, *perusal of the prospectus shows that ATL has disclosed that the working capital requirement is majorly towards sundry debtors, other current asset and creditors and provisions. Therefore, given the statement by the ATL and Auditor in the prospectus enumerating the purpose for which working capital is needed, it is difficult to conclude on preponderance of probability basis, that there existed red flags on the aspect of whether utilisation of the bridge loan is in the nature of working capital requirement or not. I also note that the Noticee has submitted that the deployment of funds certificate was also provided by the Statutory Auditor which classified the utilization of the funds for working capital. Further, I also note that there are*

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

10. Further, with respect to certificate provided by the Statutory Auditor which classified the utilization of the funds for working capital, I note that WTM has stated the following:
"*I note here that except, lapse / flaw in the process of independent judgment by the Appellant, there is no allegation of any collusion of the Appellant with the Issuer Company or Auditor. Noticee in this respect has submitted that they received certificate from M/s K. Gopalkrishnan & Co., statutory auditor of ATL that, company has utilized bridge loan availed from UBI to pay working capital of Rs. 13 crores and Noticee has no red-flags to question auditor's certificate"*

11. I note that, Noticee while submitting due diligence certificate with regard to the IPO of ATL has also relied upon the certificate of utilisation of bridge loan of Rs. 20 crores by Messrs K Gopalakrishnan and Co. (CA) in the matter of Acropetal Technologies Ltd. In this regard, I note that, it was disclosed in the prospectus (at Page 63) that statutory auditor of ATL during the relevant period i.e., Messrs K Gopalakrishnan and Co had certified vide letter dated January 24, 2011 that the loan amount was utilized as follows: -
    (a) Advance towards construction of building -Rs.7.00 Cr
    (b) Towards working capital -Rs.13.00

12. In this regard, undersigned in order dated March 31, 2022 with respect to Messrs K Gopalakrishnan and Co. (CA) in the matter of Acropetal Technologies Ltd. has observed

that, Messrs K Gopalakrishnan and Co. has blindly accepted the documents and statements provided by ATL and did not carried out independent assessment of same before certifying the utilization of the funds for working capital. Further, it was also observed that, Messrs K Gopalakrishnan and Co. was also statutory auditor of Equastone for the F.Y. 2010-11 & 2011-12 that is during the period, ATL came out with an IPO and thus, it miserably failed to identify and verify the correctness in utilization of bridge loan despite associated with ATL for a long period i.e., since 2001 till 2017 and also being statutory auditor of Equastone during the time, ATL made an IPO.

13. I have also taken note of order of Hon'ble SAT in the matter of *SEBI vs Almondz Global Securities Ltd. dated 13.05.2016* mentioned in the WTM order, where the roles and responsibility of the merchant banker, requirement of due diligence, and independent verification has been determined in quite similar matter and wherein Order of Hon'ble Supreme Court in the case of "*Chander Kanta Bansal Vs. Rajender Singh Anand reported in 2008 (5) SCC 117* has been reiterated *inter-alia* stating that *"…. that due diligence in law means reasonable diligence and doing "everything reasonable, not everything possible*".

14. Thus, in view of the aforesaid facts and circumstances and considering the observations made in Hon'ble WTM order, I find that there was no existence of red flags which could have alerted the Noticee to take the independent verification and further delve into Bank statements of ATL, undertaking, declaration, auditors and KMP certification of ATL, etc. to detect that, Equastone is a related party at the relevant point of time and on the aspect of whether utilisation of the bridge loan is in the nature of working capital requirement or not. Also, placing reliance on the order of Hon'ble SAT and Hon'ble Supreme Court Order mentioned in Hon'ble WTM order, I find that, the allegation against Noticee that, Noticee being BRLM to the public issue of ATL has failed to do independent professional judgment and due diligence for the non-disclosure and wrong disclosure in the prospectus with respect to related party transaction and utilization of the issue proceeds towards working capital requirement in the prospectus of ATL does not stand established.

15. In view of the above, I find that the allegation of violation of the provisions of regulation 60(7)(a) and 64(1) of ICDR Regulations, regulation 13 r/w clause 1, 2, 3, 4, 6, 7 and 20 of Code of Conduct for merchant bankers specified under Schedule III in Merchant Bankers Regulations by the Noticee does not stand established.

16. As the alleged violations by the Noticee is not established, Issues II and III do not merit consideration

ORDER

17. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Rules, I am of the view that no penalty is warranted against the Noticee in the matter and accordingly the matter is disposed of.

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

Date : May 30, 2022 **Vijayant Kumar Verma**

Place : Mumbai **Adjudicating Officer**