BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BM/DS/2024-25/30285]

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

IN THE MATTER OF
Tipsons Consultancy Services Private Limited
(PAN: AADCT6508J)

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted inspection of M/s Tipsons Consultancy Services Private Limited (hereinafter referred to as "**Noticee**"/"**TCSPL**") on August 29, 2023 to ascertain compliance with provisions of SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021 (hereinafter referred to as "**NCS Regulations, 2021**") and SEBI (Merchant Bankers) Regulations, 1992 (hereinafter referred to as "**Merchant Bankers Regulations, 1992**") for the period beginning from April 01, 2021 till July 31, 2023 (hereinafter referred to as "**the inspection period**" / "**IP**").

2. SEBI initiated adjudication proceedings against the Noticee under section 15HB of SEBI Act, 1992 for the alleged violations of the provisions of Regulation 28(3)

of NCS Regulations, 2021 and Regulation 20(1) and Regulation 13 read with Clause 3 and 4 of Schedule III of Merchant Bankers Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer **(AO)** vide Order dated February 01, 2024 under Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**SEBI Adjudication Rules**"), to inquire into and adjudge under section 15HB of SEBI Act, 1992, the alleged violations of provisions of NCS Regulations, 2021 and Merchant Bankers Regulations, 1992 against the Noticee.

SHOW CAUSE NOTICE, REPLY OF THE NOTICEE AND HEARING

4. Show Cause Notice No. SEBI/EAD/BM/DS/8404/1/2024 dated March 04, 2024 (hereinafter referred to as **"SCN"**) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 and Rule 4 of SEBI Adjudication Rules, to show cause as to why an inquiry should not be held against it and why penalty, if any, under section 15HB of SEBI Act, 1992 be not imposed on the Noticee.

5. The SCN issued to the Noticee alleged as follows:
   5.1. The Noticee is a SEBI registered merchant banker with SEBI Registration No. INM000011849. The Noticee was the merchant banker for the issue of Non-Convertible Debentures (NCD) of U Gro Capital Limited – April 2022 issue and September 2022 issue (U Gro Capital Limited is hereinafter referred with its name / "**the issuer**").

5.2. Based on the findings of inspection and reply to the communication of findings vide email dated December 19, 2023 received from the Noticee, following was alleged.

5.2.1. Due diligence was conducted prior to appointment as merchant banker.

5.2.2. Delay in conducting due diligence.

5.2.3. Inadequate due diligence conducted with respect to fines levied by the stock exchanges.

5.3. <u>Due diligence was conducted prior to appointment as merchant banker.</u> - With respect to the NCD issue of U Gro Capital Limited – April, 2022, following was observed.

<u>TABLE - 1</u>

Sr. No.	Date	Particulars
1	28/02/2022	Appointment of Noticee as merchant banker
2	09/03/2022	Date of issuer agreement
3	31/12/2021 ; 01/01/2022	Date of due diligence screenshots of *watch out investors* website

5.4. It was observed that the screenshots of *watch out investors* for checking the eligibility criteria of the issuer under Regulation 5 of the NCS Regulations, 2021 were prior to appointment of the Noticee as Merchant Banker for the aforesaid issue. Thus, the Noticee was associated with the aforesaid issue, prior to its appointment as the merchant banker. Thus, it was alleged that the Noticee has violated the provisions of Regulation 20(1) of Merchant Bankers Regulations, 1992.

5.5. Delay in conducting due diligence. - It was observed that the draft offer document for U Gro Capital Limited **–** NCD Issue, September 2022 was filed on August 12, 2022. However, the screenshots of *watch out investors* submitted by the Noticee vide email dated December 19, 2023 with respect to the aforesaid NCD issue are dated August 16, 2022, August 17, 2022 and August 19, 2022, i.e. after the filing of the draft offer document with the stock exchanges. Therefore, it was alleged that Noticee has violated the provisions of Regulation 28(3) of NCS Regulations, 2021 and Regulation 13 read with Clause 3 and 4 of Schedule III of Merchant Bankers Regulations, 1992.

5.6. Inadequate due diligence conducted with respect to fines levied by the stock exchanges - From the screenshots of *watch out investors* website submitted by the Noticee vide email dated December 19, 2023, it was observed that with respect to the NCD issues of U Gro Capital Limited of April, 2022 and September, 2022, that the aforesaid screenshots do not provide details of fines levied by stock exchanges. The eligibility criteria for issuer under NCS Regulations, 2021 under Regulation 5(1)(f) mandates that no fines and penalties levied by the Board /Stock Exchanges is pending to be paid by the issuer at the time of filing of offer document.

5.7. Thus, it was alleged that the Noticee has not conducted adequate due diligence with respect to eligibility criteria of the issuer, and has thus violated the provisions of Regulation 28(3) of NCS Regulations, 2021 and Regulation 13 read with Clause 3 and 4 of Schedule III of Merchant Bankers Regulations, 1992.

6. The SCN was duly served on the Noticee through SPAD and digitally signed e-mail. Vide letter dated March 19, 2024, the Noticee submitted its response to the SCN, which has been summarized below.

6.1. <u>Due Diligence was conducted prior to the appointment of Merchant Banker</u> - During the period from December 2021 till January 2022, Noticee was having regular interaction with UGRO Capital Ltd (hereinafter referred to as "UCL") for private placement NCD issue and also for initial planning for NCD Public Issue as per mutual consent and discussions and during that period, the Noticee had made search from the "watch out investor". Noticee had mobilized issue of NCDs on private placement basis of UGRO Capital Ltd. for issue size of Rs.25 Crores during January 2022.

6.2. Moreover, it was initially planned by UCL to come out with the public issue of NCDs in January 2022 / February 2022 but the same got delayed due to UCL's privately placed issues floated during January 2022. Meanwhile, the Noticee was in discussion with the Issuer for checking the Pre-IPO eligibility criteria for issuance of NCDs through public issuance mode. So, during such discussion we had checked the eligibility criteria and took the screenshots from the "watch out investor" in the month of December 2021 and January 2022.

6.3. After Noticee's formal engagement as Merchant Banker on 28th February, 2022, it was supposed to do the "watch out investors" search again as a part of its due-diligence process. However, as Noticee had already made search on "watch out investors" in December 2021 and January 2022 and therefore, inadvertently, it considered screenshot taken in the month of December 2021 and January 2022. Noticee has apologized for this procedural lapse.

6.4. <u>Delay in conducting Due Diligence</u> - For September 2022 NCO public issue of UCL, the search on "watch out investors" database should have been done before the draft offer document which was filed with Stock Exchange/ SEBI on

August 12, 2022. However, Noticee had inadvertently, missed out and it could not make the search on "watch out investor" before filing of Draft Prospectus. Subsequently, it realized this lapse and as part of its due diligence process, Noticee completed this exercise of search on "watch out investor" on August 16, 2022 and August 17, 2022. Noticee has apologized for the same and ensured to take due care in this regard in its future assignments.

6.5. <u>Inadequate Due-diligence conducted with respect to fines levied by Stock Exchanges</u> - While the Noticee made its search on "watch out investor" website, it had selected the relevant field including "the Regulators" category and also the Offender Category as "Companies" but omitted to select the field under Category of "Reason". Noticee was under the impression that having selected "All Regulators category" and selecting offender category as "company", it will float the result for all types of default including the fines levied by the Stock Exchanges. Had it selected the proper field in the reason category the result should have shown the fines levied by the Stock Exchanges. Though Noticee had done the procedure, however, due to the intermittent mistake by not selecting the relevant field in the reason category, this error had happened. Noticee apologized for the error occurred and ensured that it will take utmost care in future.

7. Vide hearing notice dated March 21, 2024, the Noticee was provided an opportunity of personal hearing in the interest of natural justice. The Noticee was advised to appear before the undersigned on April 10, 2024. The Noticee appeared for the scheduled hearing through its Managing Director and Compliance Officer as authorised representatives (AR). The AR reiterated the submissions already made vide letter dated March 19, 2024. The AR also made additional submissions during the hearing, which it also submitted in writing. The

Noticee had submitted that no investor complaint was received during the two public issues of U Gro Capital Limited held in the month of March, 2022 and September, 2022. Also, vide letter dated April 19, 2024, the Noticee has submitted that no fine or penalties were levied by the Board /Stock Exchanges or pending to be paid by the issuer at the time of filing the offer document for the two public issue of Ugro Capital Limited held in the Month of March 2022 and September 2022. Thus, information provided to the Board /Stock Exchanges at the time of filing the offer document was true and correct.

CONSIDERATION OF ISSUES AND FINDINGS

8. Considering the findings of inspection, the allegations made out in the SCN and the submissions made by the Noticee, I find that following issues require consideration in the present case:

ISSUE I - Whether the Noticee is in violation of the provisions of Regulation 28(3) of NCS Regulations, 2021 and Regulation 20(1) and Regulation 13 read with Clause 3 and 4 of Schedule III of Merchant Bankers Regulations, 1992?

ISSUE II - Do the violations, if any, attract penalty under section 15HB of the SEBI Act, 1992?

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

ISSUE I - Whether the Noticee is in violation of the provisions of Regulation 28(3) of NCS Regulations, 2021 and Regulation 20(1) and Regulation 13 read with Clause 3 and 4 of Schedule III of Merchant Bankers Regulations, 1992?

9. The said provisions under which violations have been alleged against the Noticee are reproduced below –

<u>SEBI (Issue and Listing of Non-Convertible Securities) Regulations, 2021</u>

Disclosures in the offer document

28. (3) *The lead manager(s) shall exercise due diligence and satisfy themselves on all aspects of the issue including the veracity of the disclosure in the offer document.*

<u>SEBI (Merchant Bankers) Regulations, 1992</u>

Code of conduct.

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

Responsibilities of lead managers.

20.(1) *No lead manager shall agree to manage or be associated with any issue unless his responsibilities relating to issue mainly, those of disclosures, allotment and refund are clearly defined, allocated and determined and a statement specifying such responsibilities is furnished to the Board at least one month before the opening of the issue for subscription:*

SCHEDULE III - CODE OF CONDUCT FOR MERCHANT BANKERS

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

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

10. I will now proceed with my findings in each of the alleged violations against the Noticee in the SCN dated March 04, 2024, wherein following was alleged against the Noticee.

10.1. Due diligence was conducted prior to appointment as merchant banker.

10.2. Delay in conducting due diligence.

10.3. Inadequate due diligence conducted with respect to fines levied by the stock exchanges.

Due diligence was conducted prior to appointment as merchant banker.

11. I note that with respect to the NCD issue of U Gro Capital Limited – April, 2022, the date of appointment of the Noticee as merchant banker by the issuer was February 28, 2022. Further, the issuer agreement, wherein the responsibilities relating to the issue are defined for the issuer of NCD Issue – April, 2022, is dated as March 09, 2022. However, the screenshots of *watch out investors* website submitted by the Noticee vide email dated December 19, 2023 for U Gro Capital Limited – NCD Issue, April 2022 are dated December 31, 2021 and January 01, 2022. The same is also summarized in table – 1 under paragraph 5.3 above.

12. Regulation 5 of the NCS Regulations, 2021 specifies the eligibility criteria of the issuer. It was observed that the screenshots of watch out investors website for checking the eligibility criteria of the issuer for U Gro Capital Limited – NCD Issue, April 2022 were dated December 31, 2021 and January 01, 2022, i.e. prior to appointment of the Noticee as Merchant Banker for the said issue. Thus, the Noticee carried out due diligence of the issuer prior to its appointment on February 28, 2022 as merchant banker.

13. Regulation 20(1) of Merchant Bankers Regulations, 1992 inter alia mandates that no lead manager should agree to manage or be associated with any issue unless his responsibilities relating to issue mainly, those of disclosures, allotment and refund are clearly defined, allocated and determined. In the instant case, I note that

the Noticee was associated with the issue of U Gro Capital Limited – April, 2022 NCD issue, prior to its appointment as the merchant banker, i.e. February 28, 2022.

14. Noticee has accepted the allegation and submitted that it should have conducted the "watch out" investors search after its appointment as merchant banker. In view of the above observations, I find that the Noticee has violated the provisions of Regulation 20(1) of Merchant Bankers Regulations, 1992.

Delay in conducting due diligence.

15. I note that the draft offer document for U Gro Capital Limited – NCD Issue, September 2022 was filed with Stock Exchanges on August 12, 2022. However, the screenshots of *watch out investors* submitted by the Noticee vide email dated December 19, 2023 with respect to the aforesaid NCD issue are dated August 16, 2022, August 17, 2022 and August 19, 2022, i.e. after the filing of the draft offer document with the stock exchanges.

16. As per Regulation 28(3) of the NCR Regulations, 2021, a lead manager shall exercise due diligence and satisfy itself on all aspects of the issue including the veracity of the disclosure in the offer document. However, the Noticee has conducted the due diligence of the issuer with respect to Regulation 5 of the NCS Regulations, 2021, after filing the draft offer document with Stock Exchanges.

17. Noticee has accepted the allegation and submitted that it should have conducted the "watch out" investors search before the filing of draft prospectus. In view of the above, I find that the Noticee has violated the provisions of Regulation 28(3) of NCS Regulations, 2021 and Regulation 13 read with Clause 3 and 4 of Schedule III of Merchant Bankers Regulations, 1992.

Inadequate due diligence conducted with respect to fines levied by the stock exchanges.

18. From the screenshots of *watch out investors* website submitted by the Noticee, I note that with respect to the NCD issues of U Gro Capital Limited of April, 2022 and September, 2022, the screenshots do not provide details of fines, if any, levied by stock exchanges.

19. The eligibility criteria for issuer under NCS Regulations, 2021 under Regulation 5(1)(f) mandates that no fines and penalties levied by the Board /Stock Exchanges is pending to be paid by the issuer at the time of filing of offer document. However, in the instant case, the documentary evidence submitted by the Noticee to verify eligibility criteria of the issuer with respect to fines levied by the stock exchanges, was inadequate for both the NCD issues, viz. April 2022 and September 2022, as the screenshots were not showing the fines / penalties, if any, were levied by the Stock Exchanges.

20. In this regard, the Noticee has submitted that while it had selected the relevant fields, including "Regulators" and also the offender category as "Companies", but did not select the field for the category "Reason". While conducting the search, the Noticee was under the impression that as it has selected "All" Regulators and offender catergory as "Companies", the results pertained to all types of fines levied by the Stock Exchanges. The Noticee has accepted the mistake and submitted that it should have taken care while selecting the relevant fields on the "watch out investors" website.

21. In view of the above, I find that the Noticee, while conducting due diligence for the aforesaid two NCD issues, did not check whether any fines / penalties were levied

by the Exchanges on the watch out investors website, and thus, it is established that the Noticee has violated the provisions of Regulation 28(3) of NCS Regulations, 2021 and Regulation 13 read with Clause 3 and 4 of Schedule III of Merchant Bankers Regulations, 1992.

ISSUE II - Do the violations, if any, attract penalty under Section 15HB of the SEBI Act, 1992?

22. I note that the above violations make the Noticee liable for monetary penalty under Section 15HB of the SEBI Act, 1992, the text of which is reproduced hereunder:

SEBI Act, 1992

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

23. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had observed: "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.*"

ISSUE III - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

24. While determining the quantum of penalty under Section 15HB of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 respectively, which read as under:

SEBI Act, 1992

15J While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely

(a)the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

25. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee, nor has it been alleged by the SEBI. Further, as per the available records, it is observed that Noticee has not been penalised earlier by SEBI. Noticee has also submitted that it had not received any investor complaints with respect to the said NCD issues. It has also submitted with respect to fines and penalties levied by the exchanges upon the issuers, that information submitted to the Exchanges at the time of filing the offer document was true and correct, as no fines / penalties were levied by the Exchanges.

26. The objective of due diligence is to collect all the information about the issuer company that is necessary for investors to take an informed investment decision. It also includes reporting whether the issuer has complied with applicable laws and regulations in the recent past. If due diligence is not performed or is done inadequately, it may lead to various risks and adverse outcomes for investors and other stakeholders. A merchant banker is required to exercise due diligence and satisfy itself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents. However, in the instant case, the Noticee has violated the provisions of NCS Regulations, 2021 and Merchant Bankers Regulations, 1992, by not conducting or inadequately conducting due diligence. Such non-compliance is detrimental to the interest of investors in the securities market and calls for appropriate penalty.

ORDER

27. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, 1992 and also taking into account judgment of the Hon'ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act and Rule 5 of the Adjudication Rules, hereby impose following penalty under Section 15HB of the SEBI Act, 1992 upon the Noticee. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

Name of Noticee	Violation provisions	Penal Provisions	Penalty
TIPSONS CONSULTANCY SERVICES	Regulation 28(3) of NCS Regulations, 2021 and Regulation 20(1) and Regulation 13 read with	Section 15HB of SEBI Act, 1992	₹ 3,00,000/- (Rupees Three Lakh Only)

Name of Noticee	Violation provisions	Penal Provisions	Penalty
PRIVATE LIMITED (PAN: AADCT6508J)	Clause 3 and 4 of Schedule III of Merchant Bankers Regulations, 1992		

28. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

    ENFORCEMENT → Orders → Orders of AO → PAY NOW.

29. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

DATE: APRIL 22, 2024 **BARNALI MUKHERJEE**

PLACE: MUMBAI **ADJUDICATING OFFICER**