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

**ORDER**

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

**In the matter of Acropetal Technologies Ltd.**

**In respect of –**

<b>Sr. No.</b>	<b>Noticee</b>	<b>PAN</b>
1	Acropetal Technologies Ltd.	AADCA1623M
2	D. Ravi Kumar	ACNPK9304L
3	R J Kamath	AAEPK8776D
4	Dr. Mathew J Manimala	ADMPPM6782A
5	Dr. D K Subrahmanya Reddy	AANPR6123L
6	Mohan H Ramakrishna	AHQPR8898G

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**1. Background –**

1.1. The present matter emanates from several complaints received from the shareholders of Acropetal Technologies Ltd. (**‘Acropetal Technologies’/ the ‘Company’**) alleging non-payment of dividend declared for the financial year 2011-

12. The shares of the Company are listed on BSE.

1.2. Pursuant to the above, SEBI issued letter dated February 13, 2013 to the Company asking it to furnish information regarding declaration and payment of dividends under the Companies Act, 1956 and reasons if any, for default.

1.3. The Company by way of letter dated March 05, 2013 informed SEBI that they had not been able to pay dividend to the shareholders due to strain on the liquidity position of the Company.

## **2. Issuance of Show Cause Notice (“SCN”)**

2.1. In view of the above, a common SCN dated October 20, 2016 was issued to the Noticees.

2.2. The said SCN states that

2.2.1. the Company has not paid the dividend declared to be paid to the shareholders for the financial year 2011-12;

2.2.2. as per the provisions of Section 205(1A) of the Companies Act, 1956, the Noticees were required to deposit the amount of dividend in a separate account within 5 days of such declaration, and as per Section 207 of the Companies Act, 1956, the Noticees were under an obligation to disburse the dividend to the shareholders within a period of 30 days from the date of declaration of dividend;

2.2.3. the Noticees had failed to pay the dividend declared by the company to the Shareholders within the prescribed time, thereby violating the provisions of Sections 205(1A) and 207; and

2.2.4. considering the above, the Noticees were asked to show-cause as to why proceedings u/s 11 and 11B of the SEBI Act, 1992 should be initiated against them.

### **3. Relevant Provisions –**

3.1. The relevant provisions in this regard are as under :

#### **Section 205 (1A), Companies Act, 1956**

##### **205. DIVIDEND TO BE PAID ONLY OUT OF PROFITS**

“1 ...

(1A) The Board of directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend.”

#### **Section 207, Companies Act, 1956**

##### **207. PENALTY FOR FAILURE TO DISTRIBUTE DIVIDENDS WITHIN THIRTY DAYS**

“Where a dividend has been declared by a company but has not been paid, or the warrant in respect thereof has not been posted, within thirty days from the date of the declaration, to any shareholder entitled to the payment of the dividend, every director of the company shall, if he is knowingly a party to the default, be punishable with simple imprisonment for a term which may extend to three years and shall also be liable to a fine of one thousand rupees for every day during which such default continues and the company shall be liable to pay simple interest at the rate of eighteen per cent per annum during the period for which such default continues:

Provided that no offence shall be deemed to have been committed within the meaning of the foregoing provisions in the following cases, namely: -

- (a) where the dividend could not be paid by reason of the operation of any law ;
- (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with ;
- (c) where there is a dispute regarding the right to receive the dividend ;
- (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder ; or
- (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period aforesaid was not due to any default on the part of the company.”

**4. Personal Hearing, and Replies and Written Submissions from the Noticees –**

4.1. After the issuance of the SCN, opportunities of personal hearing were granted to the Noticees on September 13, 2019, February 04, 2020 and December 23, 2020.

4.2. A list of the Noticees who entered appearance before me along with the details of their representatives is as under:

Table- 1

Noticee No.	Noticee	Date of Hearing	Represented By	Designation
1.	Acropetal Technologies Limited	February 04, 2020 and December 23, 2020	Mr. Mohammed Mujassim	Advocate

2.	D Ravi Kumar	February 04, 2020 and December 23, 2020	Mr. Mohammed Mujassim	Advocate
3.	R J Kamath	December 23, 2020	Mr. KRCV Seshachalam (Visesha Law Services)	Advocate
4.	Dr. Mathew J Manimala	December 23, 2020	Mr. KRCV Seshachalam (Visesha Law Services)	Advocate

4.3. Further, reply dated January 19, 2021 has been received from Mohan H.

Ramakrishna, Noticee No. 6 through his Advocate, Mr. N J Kumar.

4.4. Noticee Nos. 5 has neither availed the opportunity of personal hearing nor filed any reply. The details with respect to the service of the SCN and Hearing Notices to the said Noticee is provided hereunder:

Table -2

Sl. No.	Noticee	Details
1.	Dr. D K Subrahmanya Reddy	<ul style="list-style-type: none"> <li>▪ The SCN dated October 20, 2016 was sent by Speed Post to the said Noticee at the address: 4-70-4, Lawson Bay Colony, Behind Andhra Bank, Vishakapatnam- 530017.</li> <li>▪ Hearing Notice dated August 20, 2019 informing the Noticee of the hearing scheduled for September 13, 2019 was sent by Speed Post at the above-mentioned address. As per the tracking record, the same was delivered to the Noticee on August 28, 2019.</li> </ul>

		<ul style="list-style-type: none"> <li>▪ Hearing Notice dated November 15, 2019 informing the Noticee of the hearing scheduled for February 04, 2020 was sent by Speed Post at the above-mentioned address.</li> <li>▪ Hearing Notice dated November 20, 2020 informing the Noticee of the hearing scheduled for December 23, 2020 was sent by Speed Post at the above-mentioned address. As per the tracking record, the same was delivered to the Noticee on December 01, 2020.</li> <li>▪ Publication of public notice in the newspapers, Times of India and Sakshi calling upon the Noticee to attend the personal hearing on December 23, 2020.</li> </ul>
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4.5. A summary of the replies and submissions made by the Noticees is placed hereunder:

**Noticee No. 1 (Acropetal Technologies Limited) and Noticee No. 2 (D. Ravi Kumar)**

4.5.1. The above-named Noticees by way of their letter dated January 08, 2021 have submitted their reply.

4.5.2. The Noticees have inter alia submitted that –

- a. The SCN, which has been issued for non-payment of dividend, is without jurisdiction as the said violation is punishable under the Companies Act, 1956, and the SEBI Act, 1992 does not empower action under SEBI Act, 1992 for the violation of the Companies Act, 1956.
- b. The fact that penalty has been proposed in a statute, it must not be mandatorily imposed and the adjudicating authority must act judicially to determine whether penalty should be imposed at all.
- c. SEBI has already initiated prosecution for non-payment of dividend before the Special Court for Economic Offences in Bangalore by way of CC No. 115/2016.
- d. The majority of the dividend is payable to the promoters only and dividend amount of Rs.61,64,671.20/- has already been paid and the amount due is Rs.87,00,255.60/-.
- e. The non-payment of dividend was not deliberate and the Company has never defaulted in payment of dividend. The non-payment of dividend for the financial year 2011-12 was due to the freezing of their bank accounts by the CBI.
- f. Further, the Company has huge properties in various parts of Bangalore city worth several crores.
- g. With respect to the production of minutes of the meeting of the AGM, it has been submitted that all documents were kept in the premises of the Company, and the same have been taken possession by Edelweiss Asset Reconstruction Company Limited. Also, since the documents

pertain to the year 2010-11 and have been seized by the CBI, hence it is taking considerable time to collate the same and furnish the reply.

**Noticee No. 3 (R J Kamath) and Noticee No. 4 (Dr. Mathew J Manimala)**

4.5.3. The above-named Noticees by way of their replies dated January 08, 2021 have stated the following:

*Common Submissions*

- a. There has been an inordinate delay in the proceedings initiated by SEBI against the above-named Noticees. The declaration of dividend for the financial year 2011-12 was done by the Company at its AGM held on 28.09.2012 and the first complaint for non-receipt of dividend was received by SEBI on 23.10.2012. SEBI issued letter dated 13.02.2013 to ATL asking to furnish information regarding declaration. However, the SCN was issued in October, 2016 after more than three years. Further to the same, the matter is still ongoing. The SCN must therefore be withdrawn on the ground of delay.
- b. The Noticees had seen the Audited Statement of assets and liabilities as on 31.03.2012 of ATL. As per the Audited statement ATL had Rs. 243.83 crore as the reserve and surplus and cash/ cash equivalent was Rs. 22.15 crore with ATL. In view of the Audited Statement ATL had sufficient amount available for payment of dividend at the time of declaration.



- c. Invocation of provisions of SEBI Act is untenable in the present matter. The SCN is issued by SEBI by virtue of section 55A of Companies Act, 1956 for non-compliance as required of obligations and duties as enumerated under section 205(1A) and 207 of the Companies Act, 1956. It is submitted that the alleged non-compliance by ATL was committed in the year 2012. Section 205 (1A) of Companies Act 1956 prescribes the procedure for issuance of interim dividend. Section 207 is a substantive provision providing for criminal penalties for violation of section 205 (1A). As far as default in payment of Dividend is concerned, the above section constitutes a complete code in itself. Administration of these sections does not include imposition of new penalties that are not prescribed in the Companies Act 1956. Therefore, invocation of section 11 and 11B is excessive and untenable. This position is reinforced by the fact that the section 24 of the Companies Act, 2013 expressly empowers SEBI to invoke powers under SEBI Act to take enforcement actions for violations of the provisions mentioned therein.

*Specific Submissions of Noticee No. 3*

- d. Noticee No.3 is a senior citizen (Age: 79 years), who has worked with the Canara Bank and Andhra Bank and has an impeccable track record and has never come to adverse notice of any law enforcement agency.
- e. Noticee No.3's case was peculiar and distinct from that of the other Noticees and no specific allegation has been made against him, and the

SCN has been issued solely on the basis of him being the Director of Acropetal Technologies.

- f. Noticee No.3 had joined Acropetal Technologies in the year 2010 as an Independent Non-Executive Director and continued till September 2013. He was not involved in the day to day affairs of the Company.
- g. The Notice had actively performed his duty as independent director by ensuring that the issues brought in the board meetings are discussed in the interest of shareholders in a fair and transparent manner. In this respect, Noticee No.3 in the subsequent board meeting dated February 12, 2013 had expressed serious concern regarding non-payment of dividend by Acropetal Technologies. It was recorded in the minutes of the said board meeting.
- h. Noticee No.3 cannot be termed as 'Officer in default' as per section 5(g) of the Companies Act, 2013 as he was neither the managing director, whole time director, the manager, the secretary nor any person in accordance with whose directions or instructions the Board of Directors of the company were accustomed to act.

*Specific Submissions of Noticee No. 4*

- i. Noticee No. 4 was a professor in IIM Bangalore and retired from the services of IIM on June 30, 2015. His expertise is in the field of Human resources management and organizational behaviour and not finance.
- j. Noticee No.4 joined Acropetal Technologies as an Independent Non-Executive Director on 1st February, 2010 and was on Board until 9th

December, 2013. He was not involved in the day to day affairs of the Company.

- k. The Noticee had actively performed his duty as independent director by ensuring that the issues brought in the board meetings are discussed in the interest of shareholders in a fair and transparent manner. In this respect, Noticee No.3 in the subsequent board meeting dated February 12, 2013 had expressed serious concern regarding non-payment of dividend by Acropetal Technologies. It was recorded in the minutes of the said board meeting.
- l. Noticee No.4 cannot be termed as 'Officer in default' as per section 5(g) of the Companies Act, 2013 as he was neither the managing director, whole time director, the manager, the secretary nor any person in accordance with whose directions or instructions the Board of Directors of the Company were accustomed to act.

**Noticee No. 6 (Mohan H. Ramakrishna)**

4.5.4. The Noticee by way of its reply dated January 19, 2021 has inter alia stated that –

- a. The Noticee was only a Non -Executive Independent Director and only played a limited role in an advisory capacity, and was not involved in the management of the business. He was not in-charge or control of the day-to-day affairs of Acropetal. He had resigned from his position in

Acropetal vide letter dated 14.05.2014. The Noticee was not an officer in default as per Section 5 of the Companies Act 1956.

- b. Directors who are concerned with the day to day management of the company that should ordinarily be held liable for company's offences and no liability could be cast on the Noticee as he was a Non - Executive Independent Director.
- c. Reliance in this regard has been placed on
  - i. Mahalderam Tea Estate Pvt Ltd v D.N. Prodhan [1979 49 CompCas 529 Calp.]
  - ii. R.K Khandelwal v State [(2004) 55 SCL 416] [Exhibit B], the Hon'ble Supreme Court referred to the judgment in Girdhari Lal Gupta's case [1970 SCC (2) 530] [FERA Case]
  - iii. In Mahalderam Tea Estate Pvt Ltd v D.N Pradhan [1979 49 CompCas 529 Cal] [Employees Provident Fund Case]
  - iv. Order no. WTM/GA/54/ISD/02/06 dated 16.02.2006 of the WTM, SEBI in the matter of Home Trade Limited.
  - v. State of Haryana v Brij Lal Mittal [(1998) 5 SCC 343]
  - vi. Judgment by the Hon'ble Delhi High Court in the case of S.S. Thakur v SEB/MANU/DE/1024/2013 dealing with the issue of vicarious liability of ordinary director for violation of SEBI Act

Further reliance has been placed on the following circulars to state that Non- Whole Time Director should not be considered as a defaulters

unless it is conclusively established that the default had taken place with consent or connivance and whether he acted diligently or not:

- i. Circular No. 2/13/2003/CL-V dated 25.03.2011 issued by the Ministry of Corporate Affairs
  - ii. RBI Circular under reference DBR. No. CID. BC.89/20.16.001/2014-15 dated 23.04.2015
  - iii. Circular No. List/JJB/DSS/2000 dated 11.04.2000 issued by the Stock Exchange Mumbai to all listed companies.
- d. The Noticee was not aware of the non-payment of the declared dividend to the shareholders of the Acropetal.
- e. The alleged violations were not committed with the Noticees consent/knowledge/connivance. Reliance is also placed on Section 633(1) of the Companies Act, 1956, which is an enabling provision for a director to seek relief from the court by proving that he had exercised all due diligence to prevent the commission of an offence and had acted honestly and responsibly and that the director ought to be excused.

## **5. Consideration and findings –**

5.1. As already stated, the present proceedings have arisen pursuant to the complaints received from the shareholders for non-payment of dividend. From a perusal of the replies and submissions of Noticee Nos. 1, 2, 3, 4 and 6 it is clear that the payment of dividend for the year 2011-12, declared on September 27, 2012, has not been made by the Company to the shareholders.

5.2. In this regard, it is stated that the SCN had included a list of investor complaints received against Acropetal Technologies as on February 13, 2013 as Annexure- I. The details of the said complaints are placed hereunder:

Table- 3

Sl. No.	Complaint Registration No.	Date of Complaint	Name of the complainant	Pending Days	Nature of Complaint
1	SEBIE/KN12/0000264/1	10/23/2012	Karunakara M Shetty	113	Non-receipt of Dividend
2	SEBIE/KN12/0000272/1	10/31/2012	Hemant H Jhaveri	105	Non-receipt of Dividend
3	SEBIE/KN12/0000279/1	11/6/2012	Anand Raj	99	Non-receipt of Dividend
4	SEBIE/KN12/0000293/1	11/15/2012	Sandeep Kumar Surana	90	Non-receipt of Dividend
5	SEBIE/KN12/0000294/1	11/15/2012	Hemant Jhaveri	90	Non-receipt of Dividend
6	SEBIE/KN12/0000295/1	11/16/2012	Murugavel S	89	Others
7	SEBIE/KN12/0000296/1	11/16/2012	Ajay Jayaswal	89	Non-receipt of Dividend
8	SEBIE/KN12/0000297/1	11/16/2012	Ajay Jayaswal	89	Non-receipt of Dividend
9	SEBIE/KN12/0000299/1	11/20/2012	Nand Kishore Jasoria	85	Non-receipt of Dividend
10	SEBIE/KN12/0000301/1	11/22/2012	Srilatha Gunda	83	Non-receipt of Dividend
11	SEBIE/KN12/0000304/1	11/24/2012	Anup Pudussery	81	Non-receipt of Dividend
12	SEBIE/KN12/0000309/1	11/27/2012	Lt Cdr Joginder Pal Kanaujia IN Retd	78	Non-receipt of Dividend
13	SEBIE/KN12/0000310/1	11/27/2012	Subhash Agarwal	78	Non-receipt of Dividend
14	SEBIE/KN12/0000321/1	12/4/2012	Madhya Pradesh Stock Exchange Limited	71	Non-receipt of Dividend

15	SEBIE/KN12/0000327/1	12/6/2012	SP Chockalingam	69	Non-receipt of Dividend
16	SEBIE/KN12/0000328/1	12/6/2012	Chandrakant L Sandesara	69	Others
17	SEBIE/KN12/0000331/1	12/13/2012	Sumita Chawla	62	Non-receipt of Dividend
18	SEBIE/KN12/0000332/1	12/14/2012	Yogesh.Vamagar	61	Non-receipt of Dividend
19	SEBIE/KN12/0000334/1	12/17/2012	Praful A Joshi	58	Non-receipt of Dividend
20	SEBIE/KN12/0000335/1	12/18/2012	Patel Nirav Sumanbhai	57	Non-receipt of Dividend
21	SEBIE/KN12/0000338/1	12/19/2012	Jagdish Bhalia	56	Non-receipt of Dividend
22	SEBIE/KN12/0000339/1	12/19/2012	D Prem Mohun	56	Non-receipt of Dividend
23	SEBIE/KN12/0000340/1	12/19/2012	Ram Parkash Batra	56	Others
24	SEBIE/KN12/0000341/1	12/19/2012	Vasdev Bhagwanani	56	Non-receipt of Dividend
25	SEBIE/KN12/0000342/1	12/20/2012	Udayan Seksaria	55	Others
26	SEBIE/KN12/0000345/1	12/25/2012	Nandankumar Roy	50	Others
27	SEBIE/KN12/0000347/1	12/26/2012	Nagesh Babu K B	49	Non-receipt of Dividend
28	SEBIE/KN12/0000348/1	12/26/2012	Arun Kumar Lahoti	49	Non-receipt of Dividend
29	SEBIE/KN12/0000349/1	12/26/2012	Kavita Kabra	49	Non-receipt of Dividend
30	SEBIE/KN12/0000350/1	12/26/2012	Y K Jain	49	Non-receipt of Dividend

31	SEBIE/KN12/0000351/1	12/26/2012	Nikul Vasudevbbhai Patel	49	Non-receipt of Dividend
32	SEBIE/KN12/0000352/1	12/26/2012	Vinod Radhakrishnan	49	Non-receipt of Dividend
33	SEBIE/KN12/0000356/1	12/27/2012	Geethalakshmi R Rao	48	Non-receipt of Dividend
34	SEBIE/KN12/0000358/1	12/28/2012	Rajeshri S Bhatt	47	Non-receipt of Dividend
35	SEBIE/KN12/0000360/1	12/28/2012	Mahendra P Patel	47	Non-receipt of interest for delay in Dividend
36	SEBIE/KN12/0000365/1	12/30/2012	Champa Devi	45	Non-receipt of Dividend
37	SEBIE/KN13/0000005/1	1/2/2013	Inder Pal	42	Non-receipt of Dividend
38	SEBIE/KN13/0000013/1	1/3/2013	Girija Ramesh	41	Non-receipt of Dividend
39	SEBIE/KN13/0000015/1	1/4/2013	Sanjay A Nanda	40	Non-receipt of Dividend
40	SEBIE/KN13/0000018/1	1/4/2013	Amit Anand	40	Non-receipt of Dividend
41	SEBIE/KN13/0000020/1	1/5/2013	Rajesh Sharma	39	Non-receipt of Dividend
42	SEBIE/KN13/0000023/1	1/7/2013	Adarsh Johri	37	Non-receipt of Dividend
43	SEBIE/KN13/0000027/1	1/8/2013	Dayal	36	Non-receipt of Dividend
44	SEBIE/KN13/0000028/1	1/8/2013	Aravamudhan S	36	Non-receipt of Dividend
45	SEBIE/KN13/0000032/1	1/9/2013	Pawan Rathi	35	Non-receipt of Dividend
46	SEBIE/KN13/0000033/1	1/9/2013	Mahesh Jalan	35	Non-receipt of Dividend
47	SEBIE/KN13/0000047/1	1/10/2013	Nikunj D Gandhi	34	Non-receipt of Dividend
48	SEBIE/KN13/0000049/1	1/10/2013	Dakshin A Parmar	34	Non-receipt of interest for delay in Dividend
49	SEBIE/KN13/0000051/1	1/11/2013	C. Aravindakshan Nair	33	Receipt of Refund/Dividend in Physical mode instead of Electronic mode



50	SEBIE/KN13/000052/1	1/11/2013	Alka Jindal	33	Non-receipt of Dividend
51	SEBIE/KN13/000060/1	1/12/2013	Ankeshkumar Jain	32	Non-receipt of Dividend
52	SEBIE/KN13/000062/1	1/13/2013	Minal Jaikar	31	Non-receipt of Dividend
53	SEBIE/KN13/0003066/1	1/13/2013	Kuttappan. P Jacob	31	Non-receipt of Dividend
54	SEBIE/KN13/000069/1	1/14/2013	Heera Alkesh Shah	30	Non-receipt of Dividend
55	SEBIE/KN13/000072/1	1/14/2013	Guruprasad D S	30	Non-receipt of Dividend
56	SEBIE/KN13/000075/1	1/15/2013	Jeevan Prabha Babel	29	Others
57	SEBIE/KN13/000076/1	1/15/2013	Vijay Sindhi	29	Non-receipt of Dividend
58	SEBIE/KN13/000077/1	1/15/2013	Viswanathan Perumbravil	29	Non-receipt of Dividend
59	SEBIE/KN13/000078/1	1/15/2013	Suresh Manilal Zaveri	29	Non-receipt of Dividend
60	SEBIE/KN13/000079/1	1/15/2013	Rupa Suresh Zaveri	29	Non-receipt of Dividend
61	SEBIE/KN13/000083/1	1/17/2013	Dinesh Khandelwal	27	Non-receipt of Dividend
62	SEBIE/KN13/000087/1	1/17/2013	Dinesh Khandelwal Huf	27	Non-receipt of Dividend
63	SEBIE/KN13/000092/1	1/17/2013	Rakesh Boonlia	27	Non-receipt of Dividend
64	SEBIE/KN13/000094/1	1/18/2013	Girdhari Chatrabhuj Was	26	Non-receipt of Dividend
65	SEBIE/KN13/000095/1	1/18/2013	Anand Raj	26	Non-receipt of interest for delay in Dividend
66	SEBIE/KN13/000099/1	1/18/2013	Gaurang	26	Non-receipt of Dividend
67	SEBIE/KN13/000112/1	1/21/2013	Daxaben Jitendrakumar Modi	23	Non-receipt of interest for delay in Dividend
68	SEBIE/KN13/000113/1	1/21/2013	Zahld Ali Khan	23	Non-receipt of Dividend
69	SEBIE/KN13/000115/1	1/21/2013	Chinar Sugnesh Mehta	23	Non-receipt of Dividend

70	SEBIE/KN13/0000116/1	1/21/2013	Nisha Agarwal	23	Non-receipt of Dividend
71	SEBIE/KN13/0000119/1	1/22/2013	Sajeev Kumar M.K	22	Non-receipt of Dividend
72	SEBIE/KN13/0000126/1	1/23/2013	Mahavir Prasad Sharma	21	Non-receipt of Dividend
73	SEBIE/KN13/0000127/1	1/23/2013	Pradeep Soni	21	Non-receipt of Dividend
74	SEBIE/KN13/0000139/1	1/25/2013	E.Kumaran	19	Others
75	SEBIE/KN13/0000146/1	1/26/2013	R .B Patil	18	Non-receipt of Dividend
76	SEBIE/KN13/0000149/1	1/26/2013	Dilip M. Kalburgi	18	Non-receipt of Dividend
77	SEBIE/KN13/0000152/1	1/27/2013	Madhumati M Bohra	17	Non-receipt of Dividend
78	SEBIE/KN13/0000154/1	1/28/2013	Ruchika Aggarwal	16	Non-receipt of Dividend
79	SEBIE/KN13/0000160/1	1/28/2013	Arunagiri N	16	Non-receipt of Dividend
80	SEBIE/KN13/0000162/1	1/28/2013	Arunagiri N	16	Non-receipt of Dividend
81	SEBIE/KN13/0000163/1	1/29/2013	Kailash Chandra Agarwal	15	Non-receipt of Dividend
82	SEBIE/KN13/0000165/1	1/29/2013	Amish P. Shah	15	Non-receipt of Dividend
83	SEBIE/KN13/0000169/1	1/30/2013	Anurag Aggarwal	14	Non-receipt of Dividend
84	SEBIE/KN13/0000170/1	1/30/2013	Uttam Kumar Maddhesiya	14	Receipt of Refund/Dividend in Physical mode instead of Electronic mode
85	SEBIE/KN13/0030172/1	1/30/2013	Gupta Kamal S	14	Others
86	SEBIE/KN13/0000177/1	1/31/2013	Jeevan Prabha Babel	13	Others
87	SEBIE/KN13/0000178/1	1/31/2013	Prince Babel	13	Others
88	SEBIE/KN 13/0000180/1	2/1/2013	C.R.Prennath	12	Non-receipt of Dividend

89	SEBIE/KN13/0000184/1	2/2/2013	Gokaldas Changani	11	Others
90	SEBIE/KN13/0000185/1	2/2/2013	Vijay Patel	11	Non-receipt of Dividend
91	SEBIE/KN13/0000186/1	2/2/2013	Rajesh Chandra Mandowara	11	Non-receipt of Dividend
92	SEBIE/KN13/0000188/1	2/2/2013	Mrs. Meena R. Mandowara	11	Non-receipt of Dividend
93	SEBIE/KN13/0000189/1	2/2/2013	Srinivasarao Nune	11	Non-receipt of Dividend
94	SEBIE/KN13/0000190/1	2/2/2013	Amit Kumar Rakhecha	.11	Non-receipt of Dividend
95	SEBIE/KN13/0000191/1	2/2/2013	Sulochana Soni	11	Non-receipt of Dividend
96	SEBIEJKN13/0000192/1	2/2/2013	Bhawna	11	Non-receipt of Dividend
97	SEBIE/KN13/0000193/1	2/2/2013	Ranjeet	11	Non-receipt of Dividend
98	SEBIE/KN13/0000195/1	2/2/2013	Ahmed M. Abusaad	11	Others
99	SEBIE/KN13/0000196/1	2/2/2013	Omprakhsoni	11	Non-receipt of Dividend
100	SEBIE/KN13/0000200/1	2/2/2013	Rohit	11	Others
101	SEBIE/KN13/0000201/1	2/2/2013	Subhash	11	Others
102	SEBIE/KN13/0000207/1	2/4/2013	Vijay Kumar Sharma	9	Non-receipt of Dividend
103	SEBIE/KN13/0000210/1	2/5/2013	Madhusudan Vasantao Katarkl	8	Non-receipt of interest for delay in Dividend
104	SEBIE/KN13/0000213/1	2/6/2013	Ramachandran Thaleentavide	7	Non-receipt of Dividend
105	SEBIE/KN13/0000217/1	2/7/2013	Sheibu Andrew	6	Others
106	SEBIE/KN13/0000227/1	2/10/2013	Ashok Maganlal Shah	3	Non-receipt of Dividend

107	SEBIE/KN13/0000235/1	2/13/2013	Ashish Kumar S	0	Non-receipt of Dividend
108	SEBIE/KN13/0000236/1	2/13/2013	Ashish Kumar S	0	Non-receipt of Dividend
109	SEBIP/KN13/0000009/1	1/9/2013	K.N.P.Nampoothiri	35	Non-receipt of Dividend
110	SEBIP/KN13/0000027/1	1/30/2013	Ankesh Kumar Jain	14	Non-receipt of Dividend
111	SEBIP/KN13/0000037/1	2/12/2013	Om Prakash Soni	1	Non-receipt of Dividend

5.3. The status of the above mentioned complaints filed on SEBI's SCORES system were checked. It was observed that the said complaints have been closed as having been disposed upon payment of dividend to the complainants.

5.4. In this regard, the documents/information provided by the Company on SEBI's SCORES system while closing the complaints were perused with respect to a set of investors. The relevant details as gathered from such perusal are provided hereunder:

Table-4

Sl. No.	Complainant	Details
1.	Ajay Jayaswal	Intimation letter sent by the Company to the shareholder intimating the payment of dividend has been provided.  The letter states that a dividend amount of Rs. 600 has been paid for 500 shares on May 28, 2013.

2.	Nikul Vasudevbbhai Patel	Certificate of payment of dividend with interest issued  By YES Bank Limited showing the payment of dividend along with interest of Rs. 6254.32 for 4550 shares on August 16, 2013.
3.	Dilip M. Kalburgi	Intimation letter sent by the Company to the shareholder intimating the payment of dividend through DD has been provided. The letter informs that a dividend amount of Rs. 5280 has been paid for 4400 shares on March 13, 2014. A copy of the DD drawn on State Bank of India in favour of the investor has also been attached.
4.	Bhawna	Intimation letter sent by the Company to the shareholder intimating the payment of dividend has been provided.  The letter states that a payment of dividend along with interest of Rs. 10,103.13 has been made to the investor for 7350 shares on August 16, 2013.
5.	Ahmed M. Abusaad	Certificate of payment of dividend with interest issued by  YES Bank Limited showing the payment of dividend along with interest of Rs. 18,144.39 for 13,000 shares on August 16, 2013.
6.	Om Prakash Soni	Letter addressed by the Company to the shareholder informing that a DD for the payment of dividend was

		<p>issued to the broker's account where the pool account of the investor is maintained. The company has attached the DD dated 13.3.2014 and the letter issued to the broker in this regard.</p>
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5.5. It is seen that the complaints that have been filed by the investors have been disposed of by the Company upon payment of dividend. However, it has been informed by the Company that a total of Rs.61,64,671.20/- has already been paid and an amount of Rs.87,00,255.60/- remains due to the shareholders as dividend.

***Invocation of SEBI Act for Violations of Provisions of the Companies Act, 1956***

5.6. A preliminary ground of objection taken by most of the Noticees is that the invocation of provisions of SEBI Act is untenable in the present matter. It has been submitted that the SCN has been issued by SEBI by virtue of section 55A of Companies Act, 1956 for non-compliance as required of obligations and duties as enumerated under section 205(1A) and 207 of the Companies Act, 1956. As far as default in payment of Dividend is concerned, the above section constitutes a complete code in itself. Administration of these sections does not include imposition of new penalties that are not prescribed in the Companies Act 1956. Also, the above Noticees have submitted that the aforesaid position is reinforced by the fact that Section 24 of the Companies Act, 2013 expressly empowers SEBI to invoke powers under SEBI Act to take enforcement actions for violations of the provisions mentioned therein.

5.7. In this regard, it is relevant to place hereunder the provisions of Section 24 of the Companies Act, 2013:

**“24. Power of Securities and Exchange Board to regulate issue and transfer of securities, etc.**

*(1) The provisions contained in this Chapter, Chapter IV and in section 127 shall,—*  
*(a) in so far as they relate to —*  
*(i) issue and transfer of securities; and*  
*(ii) non-payment of dividend,*  
*by listed companies or those companies which intend to get their securities listed on any recognised stock exchange in India, except as provided under this Act, be administered*  
*by the Securities and Exchange Board by making regulations in this behalf;*  
*(b) in any other case, be administered by the Central Government.*

*Explanation.—For the removal of doubts, it is hereby declared that all powers relating to all other matters relating to prospectus, return of allotment, redemption of preference shares and any other matter specifically provided in this Act, shall be exercised by the Central Government, the Tribunal or the Registrar, as the case may be.*

*(2) The Securities and Exchange Board shall, in respect of matters specified in subsection (1) and the matters delegated to it under proviso to sub-section (1) of section 458, exercise the powers conferred upon it under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the Securities and Exchange Board of India Act, 1992.”*

Similarly Section 55A of the Companies Act, 1956 states,

**55A. POWERS OF SECURITIES AND EXCHANGE BOARD OF INDIA**

*“ The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and non-payment of dividend shall, - (a) in case of listed public companies ; (b) in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by the Securities and Exchange Board of India ; and (c) in any other case, be administered by the Central Government.*

*Explanation. - For the removal of doubts, it is hereby declared that all powers relating to all other matters including the matters relating to prospectus, statement in lieu of prospectus, return of allotment, issue of shares and redemption of irredeemable preference shares shall be exercised by the Central Government, the [Tribunal] or the Registrar of Companies, as the case may be].”*

5.8. The submission that SEBI could not have initiated the instant proceedings under the powers conferred on it under the Companies Act, 1956 is incorrect. Reference in this regard is drawn to Section 55A of the Companies Act, 1956, which provides powers to SEBI to administer certain provisions of the Companies Act, 1956. In this context, the relevant part, with respect to the non-payment of dividend is highlighted hereunder: *“The provisions contained in sections 55 to 58, 59 to 81 (including sections 68A, 77A and 80A), 108, 109, 110, 112, 113, 116, 117, 118, 119, 120, 121, 122, 206, 206A and 207, so far as they relate to issue and transfer of securities and **non-payment of dividend** shall, - (a) in case of listed public companies ; (b) in case of those public companies which intend to get their securities listed on any recognised stock exchange in India, be administered by the Securities and Exchange Board of India”*. Section 55A of the Companies Act, 1956 read with Sections 207 and 621 confer power on SEBI to prosecute the offence of non-payment of dividend. As such, when non-payment of dividend by a listed company is raised as an investor grievance, the same squarely falls within the ambit of the SEBI Act, in terms of Section 15 C thereof. Thus, I do not find any merit in the contention of the Noticee that SEBI had no explicit powers under the Companies Act, 1956 to deal with non-payment of dividend.



5.9. Furthermore, it has been submitted by Noticee Nos. 3 and 4 that they were Non-executive and independent directors, and were not involved with the day to day management of the business. Thus, they were not “Officers in Default” and as such could not be made liable for the failure of payment of dividend. A similar line of argument has also been taken by Noticee No. 6.

5.10. In this regard, it would be relevant to examine the nature of directorship of the above-mentioned Noticees in the Company. A perusal of the Annual Report for the year 2012-2013 submitted by the Company with BSE, which covers the date of declaration of dividend on September 28, 2012, shows that Noticee Nos. 3 and 4 were in fact Non-executive and independent directors. Similarly, it is also seen from the said Annual Report that Noticee Nos. 5 and 6 were also shown as Non-executive and independent directors. It has also been stated that Non-executive directors are not paid any remuneration except sitting fees of Rs. 20,000 for every Meeting of the Board /Committee attended. The said Annual Report notes only Noticee No.1 as part of the Key Managerial Personnel. Also, the managerial remuneration to him for the period April 01, 2012 to March 31, 2013 has been stated to be Rs. 50,88,000.

5.11. Furthermore, in respect of the job profile of Ravi Kumar D, who is the Chairman and Managing Director of the Company, the Annual report states that he is the only Executive Director on the Board and that he has been leading the Company since its inception and has been able to tide over many challenging situations and achieve growth.

5.12. Thus, from the above it is clear that Noticee No.1, Ravi Kumar D, Chairman and Managing Director of the Company was instrumental in the management of the Company as the only executive director and KMP.

5.13. Further, it has been the stand of the Company that liquidity constraints subsequent to the declaration of dividend were responsible for the non-payment of dividend. In this regard, it would be relevant to place hereunder the Audited Balance Sheet of the Company as disclosed in the said Annual report:

Table -5

ACROPETAL TECHNOLOGIES LIMITED			
Balance Sheet as at March 31, 2013			
Particulars	Note No.	As at March 31, 2013	As at March 31, 2012
<b>A EQUITY AND LIABILITIES</b>			
1 Shareholders' funds			
(a) Share capital	1	38,89,03,580	38,89,03,580
(b) Reserves and surplus	2	2,48,96,85,467	2,43,83,35,274
(c) Money received against share warrants		-	-
2 Non-current liabilities			
(a) Long-term borrowings	3	29,88,68,538	30,83,32,498
(b) Deferred tax liabilities (net)		2,07,84,405	-
(a) Other long-term liabilities		-	-
(b) Long-term provisions	4	1,36,50,736	1,36,73,476
3 Current liabilities			
(a) Short-term borrowings	5	53,31,56,337	36,63,47,092
(b) Trade payables	6	21,51,12,002	44,48,88,842
(c) Other current liabilities	7	41,66,82,016	6,53,37,953
(d) Short-term provisions	8	13,76,90,844	16,08,83,285
<b>Total</b>		<b>4,51,45,33,925</b>	<b>4,18,67,01,999</b>
<b>B ASSETS</b>			
1 Non-current assets			
(a) Fixed assets			
(i) Tangible assets	9.a	44,51,69,416	48,92,36,276
(ii) Intangible assets	9.b	79,80,72,701	19,05,05,222
(iii) Intangible assets under development		-	21,74,84,215
		1,24,32,42,117	89,72,25,713
(b) Non-current investments	10	75,94,57,467	64,23,20,350
(c) Deferred tax assets (net)		-	63,39,960
(d) Long-term loans and advances	11	70,69,48,155	1,13,29,07,448
(e) Other non-current assets		-	-
2 Current assets			
(a) Current investments		-	-
(b) Inventories	12	-	21,01,502
(c) Trade receivables	13	1,47,07,48,489	1,24,91,82,491

(d) Cash and cash equivalents	14	8,58,68,496	22,15,73,730
(e) Short-term loans and advances	15	3,45,66,093	1,90,125
(f) Other current assets	16	21,37,03,106	3,48,60,680
<b>Total</b>		<b>4,51,45,33,925</b>	<b>4,18,67,01,999</b>

A perusal of the Balance Sheet clearly shows that the Company was financially sound during the financial years 2011-2012 and 2012-2013. In this regard, reference is drawn to SEBI's letter dated February 13, 2013 and reply of the Company dated March 05, 2013. From the above two letters, it is clear that the Company declared dividend at its 11<sup>th</sup> AGM on September 28, 2012 at the rate of Rs. 1.20 per share of Rs. 10 each for the financial year 2011-12 for 16,300 shareholders. Further, as per Section 205 (1A) and 207 of the Companies Act, 1956 the following schedule should have been followed by the Company:

Table-6

Date by which dividend should have been transferred to a separate bank account	October 03, 2012
Date by which dividend should have been paid	October 28, 2012
Dividend Amount (Rs.)	4,66,68,430

5.14. It is seen from the above balance sheet that at the end of March 2012, the Company had ample current assets including cash and cash equivalents amounting to Rs. 22.15 crore. The dividend should have been paid by October 28, 2012 i.e.,

about seven months from March 31, 2012 when the cash in hand of the Company was Rs. 22.15 crore. Considering this, the Dividend payout which was around 4.6 crore could have been easily done. Further, even at the end of March, 2013 the cash and cash equivalents with the Company was 8,58,68,496. This was more than adequate to pay the dividend payable. However, the Company has consistently avoided payment of the dividend to all the eligible shareholders, after declaration. Furthermore, reference is also drawn to the consolidated performance of the Company including that of its 4 subsidiaries, namely, Vision Info Inc. – UAE, Acropetal Inc. – USA, Kinfotech Private Limited – India, Mindriver Information Technologies Private Limited – India. The performance of the Company on consolidated basis, as provided in the said Annual report, is summarized as under:

Table-7

Figures in crore (Rs.)

Particulars	2013	2012
Total income	225.44	343.15
Total expenses	215.43	294.57
Profit Before Tax	10.01	48.58
Provisions for taxation		
Deferred tax	3.21	(3.17)
Current tax	3.34	6.86
<b>Profit After Tax</b>	<b>3.48</b>	<b>44.89</b>
Minority Interest	(0.92)	-

<b>Proposed dividend</b>	0.00	<b>4.67</b>
Provision for dividend tax	0.00	0.78
Amount transferred to General Reserve	0.51	2.90
<b>Profit transferred to Balance Sheet</b>	3.87	<b>36.54</b>

A perusal of the above table shows that for the financial year ending March 31, 2012, the consolidated profit after tax was Rs. 44.89 crore. Out of the said profits, provision was made for the payment of dividend and dividend tax. The balance profit amount was moved to the General Reserve and the Balance Sheet. Thus, even on a consolidated view, the Company and its subsidiaries seem to be in good shape.

5.15.As per the reply submitted by the Company, Dividend payment of Rs. Rs.61,64,671.20 has been made and the balance amount of Rs.87,00,255.60 to investors is still pending. Further, the Company in the reply dated January 08, 2021 has stated that the non-payment of dividend was owing to the freezing of the bank accounts by the CBI. In this regard, the Company has attached the final report of the CBI in connection with a complaint filed by the United Bank of India alleging that the Company and its directors named therein had submitted fabricated documents to avail a term loan of Rs. 20 crore. A perusal of the said final report clearly shows that the complaint by the United Bank of India was lodged on December 2, 2013 and an FIR, consequent to the complaint, was lodged by the CBI on December 13, 2013. Thus, even if the CBI has frozen the bank accounts

of the Company, the said event happened much later than the date by which the Company was required to make dividend payment. It is emphasised that the Company was required to pay the dividend by October 28, 2012. Thus, I do not find it relevant to consider subsequent events that may have caused certain constraints in the Company's ability to make the dividend payment.

5.16. Thus, upon a consideration of the above facts, it is clear that the Company and its Chairman and MD, Noticee No. 2, D. Ravi Kumar have consciously avoided paying dividend to the shareholders, which is a serious violation.

5.17. With respect to Noticee Nos. 3, 4, 5 and 6, it is seen that they were non-executive independent directors. It has been informed by Noticee Nos. 3 and 4 that in the board meeting dated February 12, 2013, the directors had raised concerns regarding the non-payment of dividend by the Company, which was recorded in the minutes of the meeting. The Noticee Nos. 3 and 4 resigned from the Board with effect from September 20, 2013 and December 09, 2013 respectively. Also, Noticee No. 6 has informed that he resigned by way of letter dated May 14, 2014 and consequent to his resignation filed Form DIR-11 with the Registrar of Companies. It is noted that the above-named directors had resigned from the Board before the issuance of SCN dated October 20, 2016 by SEBI. With respect to Noticee No. 5, it is seen from the Annual report of the Company for the year ending March 31, 2015 that Noticee No. 5 was a non-executive and independent director as on the said date. However, no information is available with respect to the exact date of end of tenure of the said Noticee, as no Annual Report has been filed by the Company after March 31, 2015 and no reply or submission has been made by the said Noticee

with respect to the present SCN. In this regard, reference is drawn to the Order dated November 27, 2019 of the Hon'ble SAT in *G. Unnikrishnan Nair and Others V. SEBI (Appeal No. 05 of 2018)* wherein it was held that “*an independent director shall be held liable only in respect of such acts of omission or commission by a company which had occurred with his knowledge, consent or connivance or where the independent director had not acted diligently.*” The said principle was reiterated by the Hon'ble SAT in its Order dated February 07, 2020 in *Dr. Venkadasamy Venkataramanujan V. SEBI (Appeal No. 254 of 2019)*. Thus, considering the financial statements of the Company, which create an impression that the Company's financial health was sound enough for a payout of Rs. 4.6 crore dividend; the non-executive independent directors cannot be said to have failed to exercise diligence while resolving to declare dividend as members of the board. Accordingly, I am inclined to take a lenient view in so far as Noticee Nos. 3, 4, 5 and 6 are concerned.

## **6. Directions —**

6.1. I, in exercise of powers conferred upon me under Sections 11(1), 11 (4) and 11B the Securities and Exchange Board of India Act, 1992 hereby pass the following directions:

6.1.1. Noticee Nos. 1 and 2 shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner for a period of two years from the date of this Order.

6.1.2. Noticee No. 2 shall also be restrained from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, or associating himself with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI for a period of two years.

6.1.3. The SCN dated October 20, 2016 stands disposed of in respect of Noticee Nos. 3, 4, 5 and 6 without any directions.

6.2. The directions contained in 6.1.1 and 6.1.2 above shall run concurrently with other debarment/restraints that Noticee Nos. 1 and 2 may be undergoing, in terms of other SEBI orders.

6.3. The above directions shall come into force with immediate effect.

6.4. A copy of this order shall be served upon the Noticees immediately. A copy shall be served on the recognised Stock Exchanges and the Depositories for necessary action.

**Place: Mumbai**

**Date: February 04, 2021**

**G. MAHALINGAM  
WHOLE TIME MEMBER  
SECURITIES AND EXCHANGE BOARD OF INDIA**