

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under Regulation 27 (5) of the SEBI (Intermediaries) Regulations, 2008 in respect of Ashika Capital Limited, registered Merchant Banker - SEBI Registration No. INM000010536

In the Matter of Sudar Industries Limited

1. Background –

1.1. The present matter emanates from an investigation carried out by SEBI into the IPO of Sudar Industries Ltd. (the “**Company**”/ “**SIL**”), for which Ashika Capital Limited (the “**Noticee**”/ “**Ashika**”) was the Book Running Lead Manager (“**BRLM**”). Consequent to such investigation, lapses in Ashika’s role as the BRLM were found, and it was *inter alia* proposed that enquiry proceedings be initiated against it.

2. Enquiry proceedings against Ashika –

2.1. Consequent to the investigation undertaken by SEBI, Enquiry Proceedings were initiated against Ashika, a registered intermediary, in terms of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008 (hereinafter referred to as the “**Intermediaries Regulations**”), by appointing a Designated Authority (hereinafter referred to as “**DA**”) in respect thereof.

2.2. Pursuant to the said appointment, the DA issued a SCN dated December 15, 2017 bearing number SEBI/EAD-12/SM/EE/31892/2017. The SCN alleged violation of the following provisions of law, viz.—

- a. Regulation 60 (7) (a) of the SEBI (ICDR) Regulations, 2009;
- b. Regulation 64 (1) of the SEBI (ICDR) Regulations, 2009; and
- c. Regulation 13 of the SEBI (Merchant Bankers) Regulations, 1992 read with Clauses 1, 2, 3, 4, 6, 7 and 21 of Schedule III, SEBI (Merchant Bankers) Regulations, 1992.

2.3. A summary of the facts brought out in the Enquiry Report is provided hereunder:

- a. **Non-disclosure of Independent director’s involvement in key strategic and financial decisions:** Deepak Shenoy, who was an independent director of SIL, was concurrently holding two positions: one as an employee in Finaventure Advisory Services India Pvt. Ltd (now Virtuous Capital Ltd,

hereinafter also referred to as “**FASIPL**”) and the other as an Independent Director SIL. FASIPL and Deepak Shenoy were providing consultancy to SIL on the IPO, while at the same time, Deepak Shenoy was an Independent Director, which required him to independently look at the workings of SIL, so as to protect the interest of the public/minority shareholders. The above two positions being held by Deepak Shenoy were clearly in conflict with each other. Also, as a director, Deepak Shenoy was involved closely with the key strategic and financial decisions, which was not in consonance with his role as an independent director. This was a clear risk factor which should have been brought out by the Merchant Banker in the Offer Documents. However, no disclosure with respect to the role of Deepak Shenoy was made under internal risk factors in the prospectus of SIL.

- b. **Heavy dependence on few buyers/suppliers and non-disclosure of the buyers and suppliers being related to the promoters and the promoter group:** SIL has been highly dependent on its top three to four clients for around 80% of its revenues. The top three customers, accounting for around 70% and 80% of the turnover of the company for the financial year 2008-09 and 2009-10 respectively were Shalom Fashion, Addon Exports and MTV Exports and the some of the said buyers and sellers were related to the promoters and promoter group. However, the merchant banker has provided wrong disclosures pertaining to the customers and suppliers and their relation with the promoters and the promoter group.

c. **Wrong disclosures made in the offer document regarding KMPs:**

Disclosures with respect to details of KMPs and details of arrangement between KMPs with major shareholders, customers, suppliers of the issuer company has to be disclosed in the prospectus by virtue of ICDR regulations. However, the disclosures with respect to the above have been wrongly made in the prospectus of SIL.

d. **Non – Disclosure of Related Party Transactions:** The Noticee Company did not disclose the transactions with Addon Exports, A R Fabrics, Elim Traders, R J Traders and Shalom Fashion in the Related Party Transactions despite the fact that all these firms were proprietary concerns of employees of SIL and/or connected/related to its KMP.

2.4. For the lapses as stated above, the DA, in his report dated June 16, 2020, found that Ashika had contravened the provisions as enumerated at 2.2 (a), (b) and (c) above. In view of the same, the DA in terms of provisions of Regulation 27 of the Intermediaries Regulations recommended that the Noticee may be issued a strong warning and advised to ensure strict compliance with the applicable provisions of securities law in future.

3. Post – Enquiry SCN dated August 11, 2020 –

3.1. After considering the Enquiry Report, post –enquiry SCN dated August 11, 2020 under Regulation 28(1) of the Intermediaries Regulations was issued to Ashika (enclosing therewith a copy of the Enquiry Report), calling upon it to show

cause as to why action as recommended by the DA or any other penalty/direction should not be imposed on it in terms of Regulation 28 (1) and (2) of the Intermediaries Regulations, as deemed fit, by the Designated Member (hereinafter referred to as the “**DM**”).

3.2. An opportunity of personal hearing before the DM was granted to the Noticee on January 06, 2021. Mr. Narendra Kumar, Vice President appeared on behalf of the Noticee. The oral submissions made at the personal hearing on January 06, 2021; the reply to the SCN, dated September 01, 2020; and the submissions made by the Noticee by way of its reply dated February 16, 2018 before the DA, to the extent relevant to the present proceedings, are summarised hereunder –

- a. The non-compliances/deficiencies brought out in the Enquiry Report were not due to any fault of Ashika Capital but that of Sudar Industries Limited.
- b. Two show cause notices have been issued against Ashika Capital with respect to the allegation of lack of due diligence and in respect of one show-cause notice Adjudication Order has already been passed where a penalty of Rs. 5,00,000 was imposed.
- c. Considering that penalty has already been imposed on Ashika Capital, the present proceedings under the above mentioned SCN may be dropped.

- d. With respect to independent director, Deepak Shenoy, post receipt of observations in the CRISIL Report dated January 21 2011, enquiries were from the CMD of SIL, Murugan Muthiah Thevar as to role of Deepak Shenoy in the key and strategic decisions of SIL. At the relevant time, it was given to understand by Murugan Muthiah Thevar that since he was educated till Matriculate only, it was difficult for him to understand document presentation. Moreover, he was not very conversant with the English language and was comfortable only in vernacular language. Hence, he had taken Deepak Shenoy for the purpose of meeting with CRISIL/ other offices for more clarity on the issues. Further, Murugan Muthiah Thevar had confirmed that Deepak Shenoy had no role to play in the business and financial decisions of SIL, which were taken by CMD along with other Members of the BoDs. During interactions with SIL officials, at no point of time involvement of Deepak Shenoy in the day to day affairs of SIL was visible. At the relevant time, it was also confirmed by the CMD of SIL, Murugan Muthiah Thevar that there were no financial transactions etc. of SIL with either Deepak Shenoy/his family members etc.
- e. The CRISIL report was received after 21st January 2011 and the IPO was slated for 21st February 2011, between which the required level of due diligence was conducted. Although nothing was found that

indicated day to day involvement of Deepak Shenoy in the operational affairs of SIL, the details given in the CRISIL report was stated as Internal Risk factor no. 1 at Page No. 11.

- f. The role of an Independent Director as a Member of the Board of Director is to contribute in strategic decisions, which helps in the growth of the Company. During the relevant time, there was no requirement of Independent Director as per Companies Act, 1956. Hence, there were no specific guidelines under the Companies Act, 1956 for a due diligence process in respect of Independent Directors.
- g. For the due diligence of the customers of the Company including Shalom Fashion, Addon Exports, MTV Exports and India Fashion, a team had visited the registered office of the Company at Vashi, Navi Mumbai and Factory at Khalapur Taluka, Raigad District and had carried out the verification of Sales Bill, Confirmation or statement of account received of trade debtors and discussion with the management and auditor of SIL.
- h. The point raised in the CRISIL report was regarding the business risk since 90% of the Company's revenues depended on the top 3 to 4 clients. There was nothing contained in the CRISIL report which suggested that there was any link between the Company, KMPs and/or the buyers.

- i. As BRLM, the concentration was on bringing out the business risk factor regarding the issue (as indicated in CRISIL report) and the same was addressed sufficiently in the RHP and Prospectus, where the names of the top buyers and their contribution to the revenue in FY 2008-09 and FY 2009-10 at Page no. 14 (Sl. No. 12) along with the associated business risks were provided in detail.
- j. The fact that Shalom Fashion and Addon Exports were amongst the top customers of SIL was also disclosed in the Offer document. It was also confirmed by SIL that the customers/sundry debtors including Shalom Fashion and Addon Exports were not directly or indirectly related to them.
- k. The fact that M/s. Shalom Fashion was related to Santosh Ingle and M/s. Addon Exports was related to Valliamal Murugan Thevar was not even captured in Related Party Transactions by the Statutory Auditors in the Audited Financial Statements which is publicly disclosed and not even in the Restated Financials Statement provided by the Independent Auditor. Therefore, there was no clue available that could have indicated us to delve deeper in this direction.
- l. The role of BRLM is neither investigative in nature nor in the nature of forensic audit. The due diligence process is guided by reasonability, and practically it is not possible to delve deeper in a matter unless there is any

suspicion. In the above cases, there was nothing on record that could have raised any suspicion that M/s. Shalom Fashion was related to Santosh Ingle and M/s. Addon Exports was related to Ms. Valliamal Murugan Thevar.

- m. There was no disclosure regarding Related Party Transactions of the Company with Reena Nadar, Edwin Joseph and Ramesh Andy Thevar and/or their proprietorships in Audited Financial Statements and Restated Financial Statements. Therefore, there was no reason for any suspicion that could have led us to look further in it.
- n. The Audited Financial Statements of FY 2005-06 to 30th September 2010 of the Statutory Auditors and Restated Financial Statements for even period by the Independent Auditor also did not include/ indicate any relation/transactions with the proprietorships of KMPs - Reena E Nadar, Manager Accounts and Y Edwin Joseph, Manager Corporate Planning. There was nothing on record that could have raised any suspicion that the above disclosures were not correct.
- o. There were no standard guidelines in place for the due diligence process carried out by Merchant Bankers for public issues and in fact the need of the same was felt by SEBI subsequent to this IPO. The Association of Investment Bankers of India (AIBI) came out with Due Diligence Manual in August 2012, while the IPO process of SIL

concluded in February 2011 (18 months before). The manual with respect to Related Party transactions and KMPs disclosure, provides that the same is to be relied on the confirmation of the Issuer Company and Related Party Transactions statement in the financial statements, which was adequately done.

- p. Wherever there were doubts, steps were taken to examine the matter further and disclosures were made based on examination. The BRLM is not supposed to act like an investigating agency or conduct Forensic Audit.

4. Consideration of issues and findings –

Allegation No. 1 – Non-disclosure of the role of the Independent director in key strategic and financial decisions

4.1. The DA in his Enquiry Report has stated that by virtue of clause 49 of equity listing agreement, relevant SEBI circular and ICDR Regulations, 2009, the merchant banker was required to verify the role of Deepak Shenoy as an independent director of SIL. It is alleged that no disclosure with regard to the same was made in the prospectus of SIL.

4.2. In this regard, the DA has noted that Deepak Shenoy, who was an independent director of SIL, was concurrently holding two positions i.e., an employee of FASIPL and as an independent director on the board of SIL. In this regard, it is

noted that Deepak Shenoy in his Statement dated November 30, 2015 made to SEBI has stated that he played a major role in the IPO of SIL. He has stated that:

Finaventure Advisory Services India Pvt. Ltd (now Virtuous Capital Ltd, hereinafter also referred to as FASIPL and/ or VCL) used to provide consultancy to then M/ s Sudar Garments Pvt Ltd. (hereinafter referred to as “SGPL”), for raising debts and he used to deal with SGPL as employee of Finaventure. As we were providing consultancy to SGPL for raising debts, we came out with the idea of raising funds for Sudar Garments Limited through an IPO. During January 2010 while being employee of FASPIL, I became independent director in SGL. Accordingly for the purpose of IPO, we started scouting for a Merchant Banker. FASPIL as consultant to Sudar held discussions with ACL and finalized it as BRLM.

4.3. This position was subsequently confirmed by the Managing Director of SIL in his statement dated November 06, 2015 as well as by certain customers/suppliers of SIL (some of whom were also employees of SIL). It was also observed from the Annual Report of SIL for the Financial Year 2010-11 that Deepak Shenoy along with Murugan M Thevar were signatories for and on behalf of the Board of Directors of SIL.

4.4. Further, with respect to role of one of the independent directors, the CRISIL grading report of the IPO of SIL stated that—

“One of the independent directors is closely involved in business activities and plays a major role in guiding the promoter in taking business and financial decisions. We believe this will limit his

ability to act in the best interest of minority shareholders. Also, we believe the other independent directors have limited understanding of their roles and responsibilities. They are not adequately equipped to provide guidance and exercise oversight to ensure that the interests of minority shareholders are protected. In the past, the company has made unrelated financial investments which could have otherwise been invested in the operations of the company.”

4.5. In this regard, the Noticee in its reply has stated that “...we were given to understand by Mr. Murugan Muthiah Thevar that since he was educated till Matriculate only, it was difficult for him to understand document presentation. Moreover, he was not very much conversant with English language and was comfortable only in vernacular language. Hence, he had taken Deepak Shenoy for the purpose of meeting with CRISIL/ other offices for more clarity on the issues. Further, Mr. Murugan Muthiah Thevar had confirmed that Deepak Shenoy had no role to play in the business and financial decisions of SIL, which were taken by CMD along with other Members of the BoDs.”

4.6. Further the Noticee has stated that “...during the relevant time, there was no requirement of Independent Director as per Companies Act, 1956. Hence, there were no such specific guidelines under Companies Act, 1956 for due diligence process on Independent Directors....”

4.7. It is obvious that Deepak Shenoy was concurrently holding two positions viz., one as an employee of FASIPL, which was acting as a financial consultant to SIL and other as an independent director of Sudar (to which the consultancy was being given). Therefore, from the above, it is apparent that the contention of the Noticee that “Deepak Shenoy had no role to play in the business and financial decisions of SIL, which

were taken by CMD along with other Members of the BoDs”, is devoid of any merit as Deepak Shenoy being the key person representing FASIPL on the one hand and concurrently being one of the Independent Directors of SIL, was playing a key role in the IPO of SIL. This indicates that the role of Deepak Shenoy as a consultant was in direct conflict with his role as an Independent Director.

4.8. With regard to Noticee’s contention of *no requirement of Independent Director as per Companies Act, 1956*, it is observed that Annexure-I of SEBI circular no. SEBI/CFD/DIL/CG/1/2004/12/10 dated October 29, 2004, bearing the subject “Corporate Governance in listed Companies – Clause 49 of the Listing Agreement” talks about composition of board and states that—

“(A) Composition of Board

- i. The Board of directors of the company shall have an optimum combination of executive and non-executive directors with not less than fifty percent of the board of directors comprising of non-executive directors.*
- ii. Where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors.*
- iii. For the purpose of the sub-clause (ii), the expression ‘independent director’ shall mean a non-executive director of the company who:*

- a. *apart from receiving Director's remuneration, does not have any material pecuniary relationships or transactions with the company, its promoters, its senior management or its holding company, its subsidiaries and associated companies;*
- b. *is not related to promoters or management at the Board level or at one level below the Board;*
- c. *has not been an executive of a company in the immediately preceding three financial years;*
- d. *is not a partner or an executive or was not a partner or an executive during the preceding three years, of any of the following:*
 - i) *the statutory audit firm or the internal audit firm that is associated with the company; and*
 - ii) *the legal firm (s) and consulting firm(s) that have a material association with the company;*
- e. *is not a material supplier, service provider or customer or lessor or lessee of the company, which may affect independence of the director; and*
- f. *is not a substantial shareholder of the company, i.e. owning two percent or more of the block of voting shares.”*

4.9. Further, Clause 7(a) (Corporate Governance) in Part A of Schedule VIII of SEBI ICDR Regulations, 2009 required that “a disclosure to the effect that the issuer has complied

with the requirements of Corporate Governance contained in the Equity Listing Agreement, particularly those relating to composition of board of directors, constitution of committees such as Audit Committee, Shareholder / Investor Grievance Committee, etc.” had to be made in the red herring prospectus, shelf prospectus and prospectus.

4.10. It is further noted that Schedule VI of ICDR Regulations, 2009 for regulations 8(1)(c), 10(3)(a), 106O(2) and 91E(5), in Form A specifies the format of Due Diligence certificate to be given by the merchant banker. Clause 2 (c) of the said form states that *“On the basis of such examination and the discussions with the issuer, its directors and other officers, other agencies, and independent verification of the statements concerning the objects of the issue, price justification and the contents of the documents and other papers furnished by the issuer* (emphasis supplied), *WE CONFIRM that:*

(a)...

(c) the disclosures made in the draft red herring prospectus/ draft prospectus/ draft letter of offer are true, fair and adequate to enable the investors to make a well informed decision as to the investment in the proposed issue and such disclosures are in accordance with the requirements of the Companies Act, 1956, the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 and other applicable legal requirements.”

4.11. Thus, from the above, it is seen that an independent director is required to be a non-executive director of the company who, apart from receiving Director’s

remuneration, would not have any material pecuniary relationships or transactions with the company, its promoters, or its senior management. Deepak Shenoy while being an employee of FASIPL, which was providing consultancy to SIL as regards its IPO, was an Independent Director in SIL. There was, therefore, clearly a pecuniary relationship that existed. The CRISIL Report dated January 21, 2011, grading the proposed IPO, had also flagged the active role of the said Independent Director in the financial and strategic decisions of SIL. Also, it is seen from the above that a disclosure to the effect that the issuer has complied with the requirements of Corporate Governance contained in the Equity Listing Agreement, particularly those relating to composition of board of directors etc. is required to be made in the red herring prospectus, shelf prospectus and prospectus. Furthermore, the prescribed format of Due Diligence certificate states that the Merchant Banker has made “independent verification” of the statements concerning the objects of the issue, price justification and the contents of the documents and other papers furnished by the issuer. Thus, from a conjoint reading of the above-mentioned provisions, it is clear that the Noticee was required to check compliance of corporate governance aspects of SIL, including the composition of the board of directors, and subject the information provided by the issuer company to independent verification. However, it is seen from the record that the Noticee has not ensured the disclosure of the role played by the Independent Director in the important financial and strategic decisions, in the offer documents.

4.12. Therefore, I concur with the DA that the merchant banker was under an obligation to verify the role of Deepak Shenoy as an independent director of SIL, in terms of Clause 49 of the Listing Agreement, read with the SEBI Circular dated October 29, 2004 and the provisions of the ICDR Regulations. Since, no disclosure with regard to the same was made in the prospectus of SIL, the Noticee Ashika Capital Ltd., was in violation of the provisions of ICDR Regulations.

Allegation No. 2- Heavy dependence of the Company on a few buyers and suppliers, and wrong disclosure with respect to the connection between those customers and suppliers and the Promoter/ Promoter Group of SIL

4.13. The DA in his findings in the enquiry report dated June 16, 2020 has stated that the merchant banker had failed to disclose the connection of the customers and suppliers with KMP of SIL. As such, the Noticee had failed to conduct a proper due diligence in this regard, which had led to the violation of SEBI ICDR and Merchant Banker Regulations. Also the heavy dependence of the Company on a few buyers and sellers has not been disclosed.

4.14. It has been brought out in the Enquiry Report that SIL has been highly dependent on its top three to four clients for around 80% of its revenues. The top three customers, accounting for around 70% and 80% of the turnover of the company for the financial year 2008-09 and 2009-10 respectively were: Shalom Fashion, Addon Exports and MTV Exports. These were proprietorship firms.

4.15. Investigation in the matter by SEBI has revealed that the said proprietorship firms were related to SIL in the following manner:

Table- 1

Customers	Proprietor	Relationship with the Company
Addon Exports	M Valliamal Thevar	Wife of M Murugan Thevar, Chairman & Managing Director of SIL, and was also part of the Promoter group
Shalom Fashion	Santosh Ingle	Had received 1,87,500 shares prior to the IPO and was the fourth largest shareholder of SIL on the date of filing of RHP of SIL. Return of Allotment form filed by SIL with MCA regarding issue of shares to Santosh Ingle in 2009, the address of Santosh Ingle was mentioned as Building no. 44, Flat no. 1552, Tilak Nagar, Chembur (East),

		Mumbai, 400089, which is the same as the address of SIL as per its Memorandum and Articles of Association. Santosh Ingle was also the witness for Murugan M Thevar in the agreement for sale dated July 27, 2007 for purchase of land by SGL Pvt. Ltd. from one Nandlal T Gurnani.
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4.16. Further, AR Fabrics, Elim Traders and RJ Traders were the Suppliers of the Company. These were also proprietorship firms. Investigation in the matter by SEBI has revealed that the said proprietorship firms were related to SIL in the following manner:

Table-2

Supplier	Proprietor	Relationship with the Company
AR Fabrics	Ramesh Andy Thevar	Brother –in-law of M Murugan Thevar, Chairman & Managing

		Director of SIL. Also part of the promoter group of SIL.
Elim Traders	E Reena Nadar	Manager Accounts of SIL, as mentioned in the RHP.
RJ Traders	Y Edwin Joseph	Manager, Corporate planning of SIL (as mentioned in RHP)

4.17. The Noticee in this regard has submitted in its reply that—

- There was nothing contained in the CRISIL report which suggested that there was any link between the Company, KMPs and/or the buyers.
- The Audited Financial Statements of FY 2005-06 to 30th September 2010 of the Statutory Auditors and Restated Financial Statements for even period by the Independent Auditor did not indicate any relation/transactions with the proprietorships of KMPs - Reena E Nadar, Manager Accounts and Y Edwin Joseph, Manager Corporate Planning. There was nothing on record that could have raised any suspicion that the above disclosures were not correct.

4.18. Page no. 15 of the prospectus of SIL details the major parties under Sundry Debtors. The Sundry Debtors also happen to be the major customers of the Company, namely Shalom Fashion, Addon Exports and MTV Exports. It is

further mentioned in the prospectus that the sundry debtors mentioned in the table on page no. 15, who are the major customers, were not in any way directly or indirectly connected with the Promoter or Promoter group. The disclosure in the prospectus to the effect that major customers are not in any way directly or indirectly connected with the Promoter or Promoter group presupposes that a minimum verification of the names of people who are the owners / proprietors of the companies, which fall in the list of top customers and suppliers of the issuer company, has been done. Any merchant banker while conducting a due diligence is reasonably expected to examine the details and relationship of proprietors of the top customers and suppliers of the issuer company with the promoter/promoter group, before making any such disclosure in the prospectus. This duty to inquire and examine the role and relation between the suppliers and customers of SIL with the Promoter and Promoter Group becomes more important when the prospectus carries an explicit assertion that the major customers are not in any way directly or indirectly connected with the Promoter or Promoter group and backed up by a due diligence certificate to this effect issued by the merchant banker.

4.19. Facts such as— M Valliamal Thevar, who was the wife of M Murugan Thevar, Chairman & Managing Director of SIL was also the proprietor of Addon Exports (which was one of the top customers of SIL); that Santosh Ingle, who was the fourth largest shareholder of SIL, was also the proprietor of Shalom Fashion (which was amongst top customers of SIL), were readily available on record and

could have been ascertained by an elementary due diligence and verification by the merchant banker. However, the merchant banker did not take any effort to find out the authenticity of facts disclosed by SIL to it. Further, facts such as R. Ramesh Andy Thevar, who was part of the promoter group of SIL was also the proprietor of AR Fabrics could have been easily ascertained. I find that the Noticee has failed to exercise due diligence of a reasonable degree and a minimum level of prudence, as is normally expected of a Merchant Banker.

4.20. In this regard, it is noted that as per the Profit and Loss account of SIL for the year ended March 31, 2011, the top three creditors were as follows:

Table- 3

Sl. No.	Name of the entity	Amount in Rs. crores
1	A R Fabrics	2.04
2	Elim Traders	5.02
3	R J Traders	5.04

From the above, it is reasonably expected that the merchant banker, whose sole duty is to authenticate and certify the facts to be disclosed in the prospectus, would attempt to find out the connection between the top creditors / suppliers of the company with its Promoter or Promoter group, especially when it is being asserted that the major customers are not in any way directly or indirectly connected with the Promoter or Promoter group.

4.21. The Noticee's contention that the audit report did not reveal the connection between the top creditors / suppliers of the company with its Promoter or Promoter group is not acceptable. It has been rightly noted by the DA that an audit report is a document containing the auditor's opinion of whether a company's financial statements comply with the generally accepted accounting principles. The Merchant Banker can rely on the audit report for the company's financials and that does not obviate the Merchant Banker from carrying out an independent verification of the connection between the promoters and the suppliers/customers. Likewise, laying the blame on the Rating Reports of CRISIL and ICRA also does not support the Noticee's conduct or its failure to do a proper due diligence before certification and making disclosures in the offer documents.

4.22. Therefore, I concur with the view of the DA that the disclosure in the offer documents that the customers and suppliers were not related to the promoter and promoter group was wrong and is in breach of the mandate contained in the ICDR Regulations and the Merchant Banker Regulations.

Allegation No. 3- Wrong disclosures made in the offer document regarding KMPs

4.23.It is further alleged in the SCN that SIL had provided wrong disclosures in its prospectus with respect to its Key Managerial Personnel (KMPs). As per the prospectus of SIL, the KMPs included—

Table- 4

Sr. No.	Name
1.	M. S. Anand - Vice President Finance
2.	Rajendra Pillai - GM Human Resource and Administration.
3.	Alberts S Pilai – Manager finishing and dispatch department
4.	Prafulla Chandra Hegde – Head Washing Department
5.	E Reena Nadar – Manager Accounts
6.	Y Edwin Joseph – Manager Corporate Planning
7.	Tirumalai Perumal – General Manager Merchandising
8.	Sapna Karmokar – Company Secretary & Compliance Officer

4.24. On page nos. 114 – 116 of the prospectus of SIL, it has been stated that there is no arrangement or understanding with major shareholders, customers, suppliers or any others pursuant to which any of the above mentioned key managerial personnel have been recruited. Further, it has been expressly stated that there exists no family relation between the Promoters / Directors and the Key Managerial Personnel.

4.25. In this regard, it is submitted by the Noticee that—

- There was nothing on record that could have raised any suspicion that these proprietorship concerns were even remotely connected with the employees/KMPs of SIL.
- There were no standard guidelines in place for the due diligence process carried out by Merchant Bankers for public issues with respect to KMPs.
- There is nothing contained in the CRISIL report which suggests that there is any link between the Company, KMPs and/ or the suppliers.
- The Audited Financial Statements of FY 2005-06 to 30th September 2010 of the Statutory Auditors and Restated Financial Statements for even

period by the Independent Auditor also did not include anything to indicate any relation/transactions with the proprietorships of KMPs.

4.26. It is observed from the statement of Murugan Muthiah Thevar dated November 06, 2015, made to SEBI, wherein he had stated that “...buyers / suppliers entities that are sole proprietary concerns of our employees are Santosh Ingle for SM Construction & Shalom Fashion, Reena Nadar for Elim Traders, Edwin Joseph for RJ Traders, Ramesh Thevar for AR Fabrics and Valliammal Thevar for Addon Exports.”

4.27. On perusal of the prospectus, it is noted that E Reena Nadar, who was shown as part of the KMP was also the proprietor of Elim Traders, which was a supplier of the Company. Similarly, Y Edwin Joseph who was shown as part of the KMP of SIL was also the proprietor of R J Traders, which was also a supplier of SIL. Thus, from the above, it is clear that Elim Traders and R J Traders were suppliers to SIL as a result of an arrangement between the said entities & SIL.

4.28. Thus, in view of the above, contention of the Noticee that “there was nothing on record that could have raised any suspicion that these proprietorship concerns were even remotely connected with the employees/KMPs of SIL” is devoid of merit. It is further noted that Murugan Muthiah Thevar in his aforesaid statement made to SEBI has also confirmed that the merchant banker never raised any query with respect to the above facts.

4.29. It is further observed that Clause 8(a) (Key Management Personnel) in Part A of Schedule VIII [for regulations 14(3), 37(a), 44, 45(1)(f), 57(2)(a), 57(2)(b), 58(1) and 58(2)] of SEBI ICDR Regulations required that “*details of the key management personnel as on the date of filing the offer document with the Board indicating name, date of joining, qualification, term of office with date of expiration of term and details of service contracts including termination/retirement benefits, if any, details of previous employment, etc.*” had to be disclosed in the red-herring prospectus, shelf prospectus and prospectus. Further clause 8(d) of the said Schedule mandates disclosure of “*any arrangement or understanding with major shareholders, customers, suppliers or others, pursuant to which any of the key managerial personnel, was selected as a director or member of senior management.*” Thus, in view of the above, the contention of the Noticee that there were no standard guidelines in place for the due diligence process carried out by Merchant Bankers for public issues with respect to KMPs does not have any merit.

4.30. Therefore, in light of the foregoing, I concur with the finding of the DA that the disclosure in the prospectus that there was no arrangement between the Key Management Personnel and the suppliers etc. was incorrect.

Allegation No. 4- Non – Disclosure of Related Party Transactions

4.31. It has further been stated by the DA in his enquiry report that the Noticee did not disclose the transactions which Addon Exports, A R Fabrics, Elim Traders, R J Traders and Shalom Fashion had with the Company, as part of the “Related Party

Transactions”, despite the fact that all these firms were proprietary concerns of the employees of SIL and/or connected/related to its KMP.

4.32. In this regard, it is submitted by the Noticee that “...*There was nothing on record that could have raised any suspicion that these proprietorship concerns were even remotely connected with the employees/KMPs of SIL...*”

4.33. Further, it has been submitted that “...*wherever we had doubts, we had taken steps to examine the matter further and made disclosures based on our examination. But involvement of BRLM is never to act like an Investigating Agency or conduct Forensic Audit...*”

4.34. It is also noted that Murugan M Thevar (MD of SIL), in his statement dated November 06, 2015, has inter alia stated that proprietorship firms namely, SM Construction, Shalom Fashion, Elim Traders, R J Traders, A R Fabrics, Addon Exports were connected / related to SIL. The details of the proprietorship firms and their proprietors is provided hereunder:

Table-5

Proprietorship	Proprietor
AR Fabrics	Ramesh Andy Thevar
Elim Traders	E Reena Nadar
RJ Traders	Y Edwin Joseph

Addon Exports	M Valliamal Thevar
Shalom Fashion/S M Construction	Santosh Ingle

4.35. In light of the above facts, it has been rightly observed by the DA that the issuer company did not disclose the transactions of Addon Exports, A R Fabrics, Elim Traders, R J Traders and Shalom Fashion, which were proprietorship firms of employees of SIL and persons connected/related to KMP of SIL, in the Related Party Transactions.

4.36. The contention of the Noticee that “there was nothing on record that could have raised any suspicion” and that “wherever we had doubts, we had taken steps to examine the matter further and made disclosures based on our examination” is devoid of merit. Thus, I find that the Noticee has failed to conduct even an elementary level verification of the persons associated with the Company’s board and the whereabouts of the major clients or customers of the Company before coming forth with the disclosures in the prospectus/offer document. This has led to wrong and misleading disclosures by the Noticee. I find that there is a serious lapse in the exercise of due diligence from the side of the Noticee as a Merchant Banker.

5. Conclusion –

5.1. In view of the above, it is concluded that lapses established above on the part of the Noticee have resulted in the violation of the following provisions of law:

- Regulation 60 (7) (a) of the SEBI (ICDR) Regulations, 2009;
- Regulation 64 (1) of the SEBI (ICDR) Regulations, 2009; and
- Regulation 13 of the SEBI (Merchant Bankers) Regulations, 1992 read with Clauses 1, 2, 3, 4, 6, 7 and 21 of Schedule III, SEBI (Merchant Bankers) Regulations, 1992.

5.2. The relevant provisions of the SEBI (ICDR) Regulations, 2009 are provided hereunder:

**“ CHAPTER VI GENERAL OBLIGATIONS OF ISSUER AND INTERMEDIARIES
WITH RESPECT TO PUBLIC ISSUE AND RIGHTS ISSUE**

Public communications, publicity materials, advertisements and research reports.

60. (1)...

(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;

Due diligence.

64. (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.”

5.3. The relevant provisions of the SEBI Merchant Banker Regulations are provided hereunder:

“CHAPTER III GENERAL OBLIGATIONS AND RESPONSIBILITIES

Code of conduct.

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

SCHEDULE III

Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992

[Regulation 13]

CODE OF CONDUCT FOR MERCHANT BANKERS

1. A merchant banker shall make all efforts to protect the interests of investors.
2. A merchant banker shall maintain high standards of integrity, dignity and fairness in the conduct of its business.
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.
- 5...
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.
7. A merchant banker shall endeavour 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.
- 8...

21. A merchant banker shall maintain an appropriate level of knowledge and competence and abide by the provisions of the Act, regulations made thereunder, circulars and guidelines, which may be applicable and relevant to the activities carried on by it. The merchant banker shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003. ”

5.4. The findings as brought out in the previous part of the Order clearly show that certain disclosures in the RHP/Prospectus were not made or if made, were incorrect. This is a clear violation by the Noticee of Regulation 60 (7) (a) of the SEBI (ICDR) Regulations, 2009 whereby obligations have been cast on the issuer and intermediaries with respect to public issue and rights issue.

5.5. Further, it has been stated in the Enquiry Report that the Noticee has violated Regulation 64 (1) of the SEBI (ICDR) Regulations, 2009. Regulation 64 (1) provides that the Merchant Banker should exercise due diligence and satisfy himself about all the aspects of the issue including the veracity and adequacy of disclosure in the offer documents. In this regard, it is stated that a Merchant Banker plays a critical role in bridging the gap between the investors and the Company. Investors rely on the information mentioned in the RHP/Prospectus to make their investment decisions and therefore there is regulatory requirement cast on Merchant Bankers to exercise great care and diligence before including any information in the letter of offer so as to provide true and complete information to investors. In this regard, the observation of the Hon'ble Supreme Court of India, in the matter of *Chander Kanta Bansal V. Rajinder Singh Anand (2008) 5 SCC 117* is

very relevant. It was stated by the Hon'ble SC that "...According to Oxford Dictionary (Edn. 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's law Dictionary (18th Edn), "Due Diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain-Dyspnea (Permanent Edn. 13-A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due Diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs..."

5.6. Thus, while the merchant banker cannot be expected to look at each and every statement and information provided by the issuer with a fine tooth comb, the merchant banker has to use such diligence that would be expected of a reasonable man. It has been noted by the DA in the enquiry report that there are no documents available on record to suggest that the Noticee had taken any step to seek clarification from the Company towards verification of the genuineness of the information before disclosure in the prospectus. It is further noted that the Noticee has merely relied on an undertaking and information given by the issuer company instead of independently verifying the facts by examination of documents. Thus, the merchant banker in the present case has mechanically disclosed the information provided by the issuer without exercising reasonable diligence to ensure adequate,

true and fair disclosures in the RHP/Prospectus. Accordingly, the Merchant Banker has violated Regulation 64 (1) of the SEBI (ICDR) Regulations.

5.7. Furthermore, Clauses 1, 2, 3,4, 6, 7 and 21 of the Code of Conduct contained in Schedule-III to the SEBI (Merchant Bankers) Regulations cast a duty on a Merchant Banker to ensure the protection of the interests of investors; provide adequate disclosures to the investors; maintain high standards of integrity, dignity and fairness in its functioning; at all times exercise due diligence, ensure proper care and exercise independent professional judgment; and maintain an appropriate level of knowledge and competence in respect of the SEBI Act, regulations etc. The Noticee by not independently exercising adequate diligence while acting as the Book Running Lead Manager in the IPO of SIL has deprived the investors of material information to enable them to make a balanced and well informed decision. This act of the Merchant Banker has clearly breached the obligations cast by way of the above mentioned clauses of the Code of Conduct.

5.8. Also, as per the Action Taken Report, besides adjudication proceedings for the instant violations, the following actions have been taken against the Noticee in other matters in the past—

Table-6

Case Name	Action Taken / Initiated
Ashika Capital Ltd.	<ul style="list-style-type: none"> ▪ Warning letter issued on 23/08/2006
	<ul style="list-style-type: none"> ▪ Administrative warning issued to Ashika Capital Ltd on November 22, 2011 pursuant to inspection of its Merchant banking operations in March -April 2011.
	<ul style="list-style-type: none"> ▪ The Merchant Banker was advised to ensure that due diligence standards are improved and relevant documents are retained in future pursuant to inspection conducted in June 2012.

6. Order –

6.1. I note that the DA has in the Enquiry Report recommended that the Noticee may be issued a strong warning and advised to ensure strict compliance with the applicable provisions of securities laws in future. I find that the recommendation is not commensurate with the gravity of the lapses/acts of negligence attributable to the Noticee. Hence, I am inclined to appropriately revise the recommendation and pass suitable directions.

6.2. I note that Regulation 28 including Regulation 28(2) of the Intermediaries Regulations was omitted by the SEBI (Intermediaries) (Amendment) Regulations, 2021, with effect from January 21, 2021. Accordingly, this order is being passed

under Regulation 27(5) of the Intermediaries Regulations, which substituted Regulation 28 of the Intermediaries Regulations.

6.3. Considering the violations brought out in the foregoing paragraphs, I, in exercise of powers conferred upon me in terms of Section 12(3) and Section 19 of the Securities and Exchange Board of India Act, 1992 read with Regulations 23 and 27(5) of the SEBI (Intermediaries) Regulations, 2008, hereby direct that the Noticee i.e. ASHIKA CAPITAL LTD, bearing SEBI Registration No. INM000010536, shall be prohibited from accepting any new clients for a period of three months from the date of this order.

6.4. The Noticee is further directed to disclose the details of the instant order with immediate effect on its website.

6.5. This order shall come into force with immediate effect.

6.6. A copy of this order shall be forwarded to the Noticee immediately.

Date: March 17, 2021

G. MAHALINGAM

Place: Mumbai

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA