

WTM/ AB /DDHS/15/2018-19

SECURITIES AND EXCHANGE BOARD OF INDIA
BEFORE WHOLE TIME MEMBER: ANANTA BARUA
INTERIM ORDER CUM SHOW CAUSE NOTICE

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of Babanraoji Shinde Sugar & Allied Industries Limited.

In respect of:

Noti cee no.	Name of the Noticee	CIN/DIN	PAN
1.	Babanraoji Shinde Sugar & Allied Industries Limited	U15420PN2011PLC138268	AACCI5569F
2.	Ranjeetsingh Babanrao Shinde	DIN01722190	AEHPS6575B
3.	Vikramsingh Babanrao Shinde	DIN01722201	AWNPS7764G
4.	Santosh Vyankatesh Garad	DIN02333626	AMLPG0929R
5.	Pranita Ranjeetsingh Shinde	DIN03549751	BAKPS4785F
6.	Santosh Baban Varpe	DIN07909017	ADYPV4119L
7.	Bhausahab Vishnupant Patil	DIN07455915	BCMPP6488C
8.	Santosh Hanumant Marathe	DIN07990735	BMFPM4838Q
9.	Babanrao Vittalrao Shinde	-----	AABHB9430Q
10.	Sunanda Babanrao Shinde	-----	AJOPS7742L
11.	Amruta Vikramsingh Shinde	-----	

The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as “the Noticees”.

1. On the basis of information received from a complaint on November 30 ,2016, SEBI has conducted an examination of fundraising activity by way of issue of Non- Cumulative

Redeemable Preference Shares ('NCRPS') by Babanraoji Shinde Sugar & Allied Industries Limited (hereinafter referred to as '**BSSAIL**'/'**the company**'), to ascertain if the company has issued NCPRS to the public in violation of the provisions of the Companies Act, 1956/Companies Act, 2013 and SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations 2013 ('**NCRPS Regulations**') with respect to issuance of NCRPS.

2. On perusal of the company's submissions (made by them by various letters) during examination, I note that BSSAIL has issued NCRPS (redeemable after 20 years from the date of respective allotments) during the financial year 2013-14, 2014-15 and 2017-18. As per the information submitted by the company vide letter dated 29/04/2018, 15/11/2018 and 11/12/2018, the details of number of investors to whom NCRPS were issued during the financial years 2013-14, 2014-15 and 2017-18 are as under:

Financial Year	No. of investors to whom NCRPS issued	Amount raised (In Crore)
2013-14	6986/6842	24.47
2014-15	173	14.95
2017-18	119	3.57

I note that there is difference in the data provided by the company in their submission on 29/04/2018 and 15/11/2018. For instance, in their submissions dated 29/04/2018, the no. of allottees for FY 2013-14 are shown as 6986, whereas in its submissions dated 15/11/2018, the no. of allottees for the same said period is show as 6842. Therefore, the company has submitted inconsistent data for the same reference period. Further, I note that there is difference between the data provided by the company and the data received from RoC, Pune (on 11/09/2018), in respect of issue of NCPRS and its subscribers. For instance, while as per RoC, there were no issuance of NCRPS in the FY 2014-15 and FY 2017-18, however, as per the submissions of BSSAIL, NCRPS were issued during the FY 2014-15 and FY 2017-18 to 173 persons and 119 persons respectively. Further, as per BSSAIL, the total no. of allottees and amount raised in the FY 2013-14 are 6986/6842 and Rs.24.47 crore respectively. However, as per RoC data, BSSAIL issued NCRPS to 2640 investors and raised Rs.9.28 crore during the said period.

3. In the context of the details of the allotment of NCRPS mentioned in the aforesaid para, the issue for determination in the instant matter is whether the mobilization of funds by BSSAIL during the financial year 2013-14, was in accordance with the NCPRS Regulations and the provisions of The Companies Act, 1956 dealing with public issue of securities.
4. A reference may be made to sections 67 of the Companies Act, 1956 which reads as under:

"67. (1) Any reference in this Act or in the articles of a company to offering shares or debentures to the public shall, subject to any provision to the contrary contained in this Act and subject also to the provisions of sub-sections (3) and (4), be construed as including a reference to offering them to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(2) any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.

(3) No offer or invitation shall be treated as made to the public by virtue of subsection (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances-

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or (b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:

Provided further that nothing contained in the first proviso shall apply to nonbanking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).”

Thus, I note that Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the first proviso to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer to fifty or more persons. However, the second proviso to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the first proviso.

5. In the instant matter, I find that, as per submissions by BSSAIL, the total no. of investors in the FY 2013-14 are 6842/6986. However, as per RoC data, BSSAIL issued NCRPS to 2640 investors. Notwithstanding, the difference in data provided by the company in its own submissions to SEBI, or the difference in data provided by RoC and the company, in all the instances, I note that BSSAIL has issued NCRPS to more than 49 persons during FY 2013-14. Hence, prima facie, I find that the issue of NCRPS by the company was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956. I note that the company in its submissions dated April 29, 2018 and November 15, 2018 while furnishing the list of allotments, has shown that, in any single allotment the no. of allottees has not exceeded 49. However, I note that, the no. of allottees taken together for all the allotments made by BSSAIL during the financial year 2013-14 has certainly exceeded 49. In this connection, reference may be made to the order dated April 28, 2017 of Hon’ble Securities Appellate Tribunal in Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016), wherein the Hon’ble SAT while dealing with the issue of NCD’s observed that “In

terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning". I note that the ratio laid down by the Hon'ble SAT in this case is applicable with equal measure and force to the issue of NCPRS as well. Hence, even though it is claimed by the company that none of its allotments have exceeded 49 persons in a single placement, but the fact that the total no. of allottees across all allotments/placements has exceeded 49, prima facie shows that the provisions of first proviso to section 67(3) of the Companies Act, 1956 is violated.

6. I find that BSSAIL is neither a NBFC or a public financial institution within the meaning of Section 4A of the Companies Act, 1956, nor has BSSAIL claimed to be any one of these. It is, therefore, prima facie noted that BSSAIL may not be covered under the second proviso to Section 67(3) of the Companies Act, 1956.
7. Hence, the issue of NCPRS may be deemed to be public issue and BSSAIL was required to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.
8. Further, as the issue of NCPRS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.. It is noted that BSSAIL has not indicated in any of its submissions that it has made an application seeking listing permission from stock exchange or refunded the amounts on account of such failure. Thus, BSSAIL has prima facie violated provisions of section 73(1) and 73(2) of Companies Act, 1956. Further, BSSAIL has also not indicated in any of its submissions that the amount collected by it is kept in a separate bank account. Therefore, prima facie, BSSAIL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account.

9. I note that BSSAIL in their submissions dated November 15, 2018, have questioned the jurisdiction of SEBI in respect of unlisted public companies. I note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned, in the case of public companies, whether listed or intending to get listed, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in its order dated August 31, 2012 in the matter of Sahara India Real Estate Corporation Limited & Ors. v. SEBI (Civil Appeal no. 9813 and 9833 of 2011), had observed that:

"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."

"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange."

10. I note that, NCRPS Regulations as effective from June 12, 2013 are applicable to the public issue and listing of non-convertible redeemable preference shares. In the instant matter, the said NCRPS Regulations were applicable to BSSAIL for all the allotments made by it during the FY 2013-14 after June 12, 2013. Therefore, prima facie, the Company has violated the following provisions of the aforesaid NCRPS Regulations, which contain inter alia conditions/requirements for public issue and listing of NCRPS viz.

- a. Regulation 4(2)(a) – Application for listing of NCRPS
- b. Regulation 4(2)(b) – In-principle approval for listing of NCRPS
- c. Regulation 4(2)(c) – Credit rating to be obtained

- d. Regulation 4(2)(d) – Dematerialization of NCRPS*
- e. Regulation 4(5) – Appointment of Merchant Banker*
- f. Regulation 5 – Material Disclosure in the Offer Document*
- g. Regulation 6 – Filing of draft Offer Document with designated stock exchange*
- h. Regulation 9 – Abridged Prospectus and application forms*
- i. Regulation 13 – Minimum subscription*
- j. Regulation 16– Mandatory Listing*
- k. Regulation 16B.(1) – Security Deposit*
- l. Regulation 22 – Obligations of the Issuer, etc.*

11. In view of the above findings, I am of the prima facie view that BSSAIL has engaged in fund mobilizing activity from the public, through the offer and allotment of NCRPS and has contravened the provisions of first proviso to section 67(3), section 73(1), section 73(2), and section 73(3) of the Companies Act, 1956 and provisions of NCRPS Regulations.

12. In terms of Section 73(2) of the Companies Act, 1956, the Company and every director who is an officer in default is jointly and severally liable for repayment of the money raised in breach of provisions of Section 73(1). From the documents available at MCA 21 Portal, I find that the present directors in BSSAIL are Noticee no. 2,4,5 and 6. I also note that, Noticee no. 3,7 and 8, who was earlier director in BSSAIL have since resigned. The details about the appointment and resignation of directors in BSSAIL are as following:

Noti cee No	Name of director	Designat ion	DIN / DPIN	Date of appointme nt	Date of cessation
2	Ranjeetsingh Babanrao Shinde	Director & Promoter	DIN017 22190	13/01/2011	NA (Continuing director)
3	Vikramsingh Babanrao Shinde	Director & Promoter	DIN017 22201	13/01/2011	18/04/2011
4	Santosh Vyankatesh Garad	Director & Promoter	DIN023 33626	13/01/2011	NA (Continuing director)

5	Pranita Ranjeetsingh Shinde	Director & Promoter	DIN035 49751	18/04/2011	NA (Continuing director)
6	Santosh Baban Varpe	Director	DIN079 09017	13/11/2017	NA (Continuing director)
7	Bhausahab Vishnupant Patil	Director	DIN074 55915	01/03/2017	03/07/2018
8	Santosh Hanumant Marathe	Director	DIN079 90735	13/11/2017	03/07/2018

13. I note that Noticee nos. 2,4 and 5, were the Directors during the period of money mobilization and hence are responsible for the offer and allotment of NCRPS in violation of the Public Issue requirements and are also liable for refund of money. Noticee no. 7 and 8 were Directors post the mobilization period and Noticee no. 3 was a director during pre-mobilisation period.

DIRECTIONS

14. From the information obtained from RoC and the submissions made by the company, it can be reasonably inferred that the money mobilization on part of BSSAIL is potentially placing investors at risk, as such issues of NCRPS are made without obtaining credit rating, complying with listing requirements, disclosure requirements etc. and are detrimental to the interest of investors and the integrity of the securities market. In light of the facts in the instant matter, I find this to be a fit case to pass ad-interim directions against BSSAIL and its Directors.

15. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4) and 11B of the SEBI Act hereby issue, with immediate effect, the following directions, which shall remain in force until further orders:-

- i. Noticee no. 1 (BSSAIL) and the directors namely, Noticee no. 2 (Mr. Ranjeetsingh Babanrao Shinde), Noticee no. 4 (Santosh Vyankatesh Garad) and Noticee no. 5 (Mrs. Pranita Ranjeetsingh Shinde), are hereby restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including

units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever. During the period of restraint, the existing holding (including units of mutual funds) of the aforesaid Noticees shall remain frozen;

- ii. Noticee no. 1 (BSSAIL) and the directors namely, Noticee no. 2 (Mr. Ranjeetsingh Babanrao Shinde), Noticee no. 4 (Santosh Vyankatesh Garad) and Noticee no. 5 (Mrs. Pranita Ranjeetsingh Shinde) shall neither dispose of, alienate or encumber any of its/their assets nor divert any funds raised from public through the offer and allotment of NCRPS;
 - iii. Noticee no. 1 (BSSAIL) and the directors namely, Noticee no. 2 (Mr. Ranjeetsingh Babanrao Shinde), Noticee no. 4 (Santosh Vyankatesh Garad) and Noticee no. 5 (Mrs. Pranita Ranjeetsingh Shinde) and Noticee no. 6 (Santosh Baban Varpe) shall co-operate with SEBI and shall furnish all information/documents in connection with the offer and allotment of NCRPS;
 - iv. Noticee no. 1 (BSSAIL) and the directors namely, Noticee no. 2 (Mr. Ranjeetsingh Babanrao Shinde), Noticee no. 4 (Santosh Vyankatesh Garad) and Noticee no. 5 (Mrs. Pranita Ranjeetsingh Shinde) are directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form, within 21 days from the date of receipt of this order. It is clarified that the present directors of BSSAIL shall ensure and facilitate the compliance of this direction by BSSAIL.
16. The preliminary findings contained in paragraphs 2 to 13 of this Order are made on the basis of the information obtained from RoC, MCA 21 Portal and submissions made by the company. Noticee no. 1, the directors namely noticee no. 2,4,5,6,7,8 and promoters namely Noticee no. 9,10,11 are hereby called upon to show cause as to why suitable directions/prohibitions under Sections 11, 11(4), and 11B of the SEBI Act should not be issued/imposed against them, including the following directions, viz. –
- i. Noticee no. 1 (BSSAIL) and the directors namely, Noticee no. 2 (Mr. Ranjeetsingh Babanrao Shinde), Noticee no. 4 (Santosh Vyankatesh Garad) and Noticee no. 5 (Mrs.

Pranita Ranjeetsingh Shinde), shall jointly and severally, within a period of three months from the date of this direction becoming effective, refund all the money collected by BSSAIL through the issuance and allotment of NCRPS including the application money collected from investors, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds from the investors to the date of actual payment, certified by two independent peer reviewed Chartered Accountants to the satisfaction of SEBI. It is clarified that the restraint imposed on the sale of assets at para 15(ii) and sale of securities at para 16 (iii), shall not operate if the sale of assets is made for the sole purpose of making refund to the investors by depositing the proceeds of sale in an Escrow Account with a nationalized bank. It is further clarified that the present directors of BSSAIL viz. Noticee no. 2, 4, 5 and 6 shall ensure and facilitate the compliance of this direction by BSSAIL;

- ii. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order (both of which should be crossed as “Non-Transferable”) or through internet banking channels such as NEFT or RTGS with appropriate audit trail;
- iii. Noticee no. 1 (BSSAIL) and the directors namely, Noticee no. 2 (Mr. Ranjeetsingh Babanrao Shinde), Noticee no. 4 (Santosh Vyankatesh Garad) and Noticee no. 5 (Mrs. Pranita Ranjeetsingh Shinde), are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this direction becoming effective, till the expiry of **four** years from the date of completion of refunds to investors as directed at para 16(i). During the period of restraint, the existing holding, including units of mutual funds, of the aforesaid directors shall remain frozen. The aforesaid directors are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this direction becoming effective till the expiry of **four** years from the date of completion of refunds to investors as directed at para 16(i);
- iv. Noticee no. 7 (Mr. Bhausaheb Vishnupant Patil), Noticee no. 8 (Santosh Hanumant Marathe), Noticee no. 9 (Mr. Babanrao Vittalrao Shinde), Noticee no. 10 (Mrs. Sunanda

Babanrao Shinde) and Noticee no. 11 (Mrs. Amruta Vikramsingh Shinde) are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, for a period of **four** years from the date of this direction becoming effective. During the period of restraint, the existing holding, including units of mutual funds, of the aforesaid noticees shall remain frozen.

17. The Noticees may, within 30 days from the date of receipt of this Interim Order–cum–Show Cause Notice, file their respective replies. In the event the Noticees intend to avail an opportunity of personal hearing, they may make a request in writing to SEBI for the same, within 30 days from the date of receipt of this Order. In the event of the Noticees failing to file replies or requesting for an opportunity of personal hearing within the said 30 days, the preliminary findings contained at paras 2 to 13 of this Order, as against the Noticees and directions at para 16 (i) to (iv) above shall become final and absolute against the respective Noticees automatically, without any further orders. It is clarified that the amount to be refunded, shall depend upon the actual amount raised from the public which may not be limited to the amount filed by the company.
18. If the noticees as referred in para 16(i) above, fail to repay the money as directed, SEBI on the expiry of three months from the date of the direction at para 16(i) becoming effective, may recover the amounts, from Noticee no. 1 (BSSAIL) and the directors namely, Noticee no. 2 (Mr. Ranjeetsingh Babanrao Shinde), Noticee no. 4 (Santosh Vyankatesh Garad) and Noticee no. 5 (Mrs. Pranita Ranjeetsingh Shinde), in accordance with section 28A of the SEBI Act, including such other provisions contained in securities laws;
19. Copy of this Order shall be forwarded to the recognized stock exchanges, depositories and Registrars and Transfer Agents (RTA's) of Mutual Funds for information and necessary action. A copy of this Order may also be forwarded to MCA/concerned RoC for their information and necessary action with respect to the directions imposed on company and the directors. A copy of this order shall also be forwarded to the Superintendent of Land Records, Pune for information and necessary action.

Interim Order Cum SCN in the matter of Babanraoji Shinde Sugar & Allied Industries Limited

20. All communications in respect of this interim order -cum- show cause notice shall be made to 'Ms. Pramila Sridhar (DGM), SEBI Bhavan, Plot no. C4-A, G Block, Bandra Kurla Complex, Bandra (E), Mumbai, Maharashtra – 400051, as well as through email at pramilas@sebi.gov.in

Sd/-

Date: January 11, 2019

ANANTA BARUA

Place: Mumbai

**WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**