

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11, 11(4), 11A and 11B (1) of the Securities and Exchange Board of India Act, 1992

In the matter of

Alchemist Holdings Limited

In re. Deemed Public Issue Norms

In respect of:

Sl. No.	Name of the Noticees	PAN	DIN
1	Mr. Balvir Singh	AAAPS5463P	00139599
2	Mr. Sukrit Sood	AOBPS0340E	00084077
3	Ms. Ashima Sood	AMZPS9585P	00037854
4	Mr. Sunil Kanti Kar	AEQPK2126K	00476819

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), had, pursuant to a preliminary enquiry into possible non-compliances with public issue norms stipulated under the provisions of the Companies Act, 1956 including Sections 56, 60 and 73 thereof by the company, Alchemist Holdings Limited (hereinafter referred to as '**Alchemist**' or '**the Company**') in respect of its offer of Redeemable Preference Shares (hereinafter referred to as '**RPS**'), issued an ex-parte interim order dated September 20, 2013 (hereinafter referred to as '**the interim order**') against the Company and its directors including Mr. Sunil Kanti Kar, Mr. Brij Mohan Mahajan, Mr. Balvir Singh, Mr. Sukrit Sood, Ms. Ashima Sood,

Mr. Vikramaditya Singh and Mr. Chandra Shekhar Chauhan.

2. Subsequently, SEBI passed a Final Order bearing no. WTM/PS/38/NRO/AUG/2015 dated August 14, 2015 (hereinafter referred to as "**Final Order**") against Alchemist Holdings Limited and the Directors, viz. Mr. Brij Mohan Mahajan [DIN: 00031819], Mr. Vikramaditya Singh [DIN: 01865565] and Mr. Chandra Shekhar Chauhan [DIN: 02517955], for the non-compliances with the public issue norms stipulated under the provisions of the Companies Act, 1956, including Sections 56, 60 and 73 thereof, by the company, Alchemist Holdings Limited in respect of offer of RPS.
3. The aforesaid Final Order *inter alia* made the following findings and directions:

Findings in Brief :

- 3.1. The Company was incorporated as Mahindra Finlease Pvt. Limited on December 22, 1995, its name was subsequently changed to Alchemist Holdings Pvt. Limited on December 17, 2005, and thereafter to Alchemist Holdings Limited on February 01, 2006. The Company Mahindra Finlease Pvt. Limited was granted a certificate of registration under Section 45IA of the RBI Act on September 11, 2000 to act as Non-Banking Financial Companies (**NBFC**). After the change of name the Company was granted another certificate of registration dated May 02, 2006.
- 3.2. NBFCs and PFIs, though may be exempted from the limit of 49 persons, they still require to comply with the clauses (a) and (b) to Section 67(3) of the Companies Act, 1956. Therefore, in a case involving an NBFC or a PFI, it has to be proved that their offer or invitation did not result, directly or indirectly, in the securities becoming available for subscription or purchase by persons other than those receiving the offer or invitation or such offer or invitation was a domestic concern of the persons making and receiving the offer or invitation
- 3.3. From the list of investors as provided by the Company, it is noted that there is nothing on record to show that the subscription by the persons was on receipt of offer/ invitation or these were domestic concern. It is seen that the investors were from various walks i.e., agriculture, service, professional, business,

retired, housewife, others, etc. SEBI had taken a prima facie view in the interim order that the offer or invitation made by the Company was not a private placement and that such offer was made to the general public. The same has not been disproved by the Company. The Company did not produce documents as sought by SEBI and thus failed to substantiate its contention that its allotment was on private placement as provided under Section 67(3)(a) and (b) of the Companies Act, 1956. In view of the above, I conclude that the offer and allotment of RPS made by the Company during the Financial Years 2005-2006, 2006-2007, 2007-2008 and 2008-2009, was a 'public issue'. The dates of allotment, number of allottees and funds mobilized has been collated from documents obtained from MCA 21 (Ministry of Corporate Affairs) portal i.e. FORM 2 (Return of allotment).

3.4. With reference to the contention of the Company on Financial Stability Report of the RBI in 2010 and the Circulars issued by RBI in the year 2013, on exemption of NBFC from the provision of section 67 of the Companies Act, 1956 [i.e. second proviso to section 67(3)], it was noted that the report does not state that NBFCs are exempt from satisfying clauses (a) & (b) to Section 67(3) of the Companies Act, 1956. Therefore, an NBFC, prior to June 27, 2013, had to have enough proof that its issue was on private placement satisfying clauses (a) and (b) of Section 67(3) of the Companies Act and from June 27, 2013 onwards had to comply with the restriction of allotting to not more than 49 in a private placement.

3.5. Also the Company's contention that SEBI advertisement dated November 15, 2013 had stated that "*Schemes/Arrangements made or offered by Cooperative Societies, deposits accepted by NBFCs* are outside the purview of SEBI's jurisdiction". It was noted that the SEBI advertisement refers only to the "deposits" by NBFCs and not offer or issuance of securities by NBFCs. NBFCs also have restraints in respect of the offer and issuance of securities to the public and these have to necessarily comply with the public issue norms mandated under the Companies Act, 1956 and the SEBI Act.

- 3.6. In view of the above, it was concluded that the Company had made a public issue of RPS as alleged in the interim order and confirmed the findings that the issue of RPS was a “public issue” of such securities in terms of the first proviso to Section 67(3) of the Companies Act, 1956. Having arrived at a conclusion that the Company had made a public issue of securities, it was under an obligation to comply with the Companies Act, 1956, SEBI Act, and the rules, regulations and guidelines framed thereunder which regulate the public issue of equity shares.
- 3.7. The issue of RPS was a “public issue” of securities in terms of the first proviso to Section 67(3) of the Companies Act, 1956. The company raised at least an amount of ₹ 444.67 crores from 4,26,676 allottees through the public issue and was under an obligation to comply with the Companies Act, 1956, SEBI Act, and the rules, regulations and guidelines framed thereunder which regulate the public issue of equity shares.
- 3.8. The Company admittedly neither issued any prospectus in relation to shares nor has it offered the same for public subscription. The Company has not provided any proof to show that it applied for listing permission from a stock exchange. The Company admitted that it did not file any 'prospectus' with respect to its offer and allotment of RPS.
- 3.9. The above said Offer of RPS was found to be a deemed public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956. Accordingly, it was held that the resultant requirements under Section 60, Section 56(1) and 56(3), Sections 73(1), (2) and (3) of the Companies Act, 1956, were not complied with by the Company.
- 3.10. The interim order and the hearing letters issued to Mr. Balvir Singh, Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Sunil Kanti Kar (**collectively referred hereinafter as “Noticees”**) returned undelivered. It is seen from the Article of Association and the Memorandum of Association filed with Registrar of Companies (RoC) that, Ms. Ashima Sood was the original subscribers of the equity share capital of the Company and was also one of the directors of the

Company. Ms. Ashima Sood and Mr. Sukrit Sood had resigned from the Company on April 01, 2006, i.e. after the first tranche of allotment of RPS to public on March 25, 2006.

- 3.11. Mr. Brij Mohan Mahajan, Mr. Vikramaditya Singh and Mr. Chandra Shekhar Chauhan, being the persons in-charge of the affairs and policies of the Company, were responsible for the contraventions committed by the Company and are the 'officers in default' and liable in terms of Section 73(2) of the Companies Act, 1956, to make the repayments to investors.

Relevant Directions

- 3.12. In view of the violations committed by the Company and the Directors, to safeguard the interest of the investors who had subscribed to such preference shares issued by the Company and to further ensure orderly development of securities market, appropriate directions were issued against the Company and Mr. Brij Mohan Mahajan, Mr. Vikramaditya Singh, Mr. Chandra Shekhar Chauhan Mr. Krishna Kumar Singh and Rajiv Kumar Nayar, which are contained in paragraph 29 of the Final Order, including direction to refund the money collected by the Company through the issuance of RPS, including the money collected from investors, till date of passing of the final order, pending allotment of NCD, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due to the investors till the date of actual payment.
- 3.13. To take appropriate steps to complete the service of the interim order on Mr. Sunil Kanti Kar, Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh, and proceed further. In view of the same, the interim directions issued vide the interim order dated September 20, 2013, against these persons shall continue in force.
4. The following directions were issued in the said interim order dated September 20, 2013, with immediate effect against the Noticees in the interim order;
- 4.1. Mr. Balvir Singh [DIN: 00139599], Mr. Sukrit Sood [DIN: 00084077], Ms. Ashima Sood [DIN : 00037854] and Mr. Suil Kanti Kar [DIN : 00476819] are

hereby directed not to collect any money from investor till further orders

- 4.2. Mr. Balvir Singh, Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Suil Kanti Kar, to show cause as to why appropriate actions under SEBI Act should not be taken/issued against them for non-compliance with the provisions of the Companies Act including sections 56, 60, 69 and 73 of the Companies Act.
5. Vide the said interim order, Mr. Balvir Singh, Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Suil Kanti Kar, were also given the opportunity to file reply, within 15 days from the date of receipt of the said interim order. The order further stated that he may also indicate whether they wish to avail an opportunity of personal hearing in the matter.
6. Subsequently, an appeal bearing Appeal No. 423 of 2015 was filed by the Company and Mr. Chandra Shekhar Chauhan, against the final order. The Hon'ble Securities Appellate Tribunal (Hon'ble SAT) vide order dated June 28, 2018, upheld all the findings and directions of the final order except deleting '*compounded at half yearly intervals*'.
7. Service of Interim Order and Personal Hearing: The letters forwarding the interim order to Mr. Sunil Kanti Kar, Mr. Balvir Singh, Mr. Sukrit Sood and Ms. Ashima Sood returned undelivered. Therefore, the letters of these persons were forwarded to the Company for onward delivery to the respective directors. An opportunity of personal hearing was also granted on June 20, 2014. The notices for the hearing issued to Mr. Balvir Singh, Mr. Sukrit Sood, Ms. Ashima Sood, Mr. Vikramaditya Singh and Mr. Sunil Kanti Kar, returned undelivered and therefore the same was forwarded to the Company for onward delivery to the Noticees. The Company vide its letter dated June 02, 2014, replied that Mr. Sunil Kanti Kar had expired. However, no death certificate was submitted. As regards, other Noticees namely Mr. Sukrit Sood and Mr. Balvir Singh, the Company replied that they had ceased to be the directors of the Company since April 01, 2006 and October 15, 2013, respectively. As regards, Ms. Ashima Sood it was submitted that she also ceased to be the director of the Company.
8. Thereafter, vide notification dated March 02, 2021, published in newspapers on

March 10, 2021, in Times of India-Kolkata Edition; Sanmarg-Kolkata Edition and Sangbad Pratidin-Kolkata Edition, The Times of India-Delhi Edition, Dainik Jagran-Delhi Edition, The Tribune-Chandigarh Edition, Dainik Bhaskar-Chandigarh Edition and Rozana Spokesman-Chandigarh Edition, the Noticees were notified by SEBI, that interim order dated September 20, 2013 was issued against the Noticees and was advised to download the interim order copy from the website of SEBI (www.sebi.gov.in) or collect the copy of said interim order from respective SEBI offices or obtain by sending email to the emails id provided in the notification. Further, the Noticees were also notified that an opportunity of hearing has also been granted on April 01, 2021 at 3.00 Pm through webex.

9. It is noted that the Noticees have neither submitted a reply in the matter nor attended the scheduled hearing in the matter.

Consideration of Issues and Findings

10. It is noted that the Company made an appeal to Hon'ble SAT against the SEBI final order dated August 14, 2015. Hon'ble SAT vide its order dated June 29, 2018, upheld all the findings and directions of the final order with the following,*while upholding the impugned orders passed by the WTM of SEBI on 14.08.2015 and 03.08.2015 we delete the direction given by the WTM of SEBI to pay interest 'compounded at half yearly intervals'.*
11. Thereafter, an appeal was filed by the Company before the Hon'ble Supreme Court of India and vide order dated November 25, 2019, the order of the Hon'ble Tribunal was upheld.
12. I have considered the allegations and materials available on record. On perusal of the same, the following issues arise for consideration. Each question is dealt with separately under different headings.
 - 12.1. *Issue No. 1 - Whether the company came out with the Offer of RPS?*
 - 12.2. *Issue No. 2 - If so, whether the said offer was in violation of Section 56, Section 60 and Section 73 of Companies Act 1956?*
 - 12.3. *Issue No. 3 - If the findings on the aforesaid issue no. 2 are found in the*

affirmative, whether the Noticee is liable for the violations committed?

Issue No. 1- Whether the company came out with the Offer of RPS?

13. I have perused the interim order and I note that the Noticees have not filed any reply disputing the same.

14. Further, the Company has admitted to the offer of Redeemable Preference Shares during the Financial Years 2005-2006, 2006-2007, 2007-2008 and 2008-2009, (hereinafter referred to as "Offer of RPS") and raising an amount of ₹ 444.67 crores from 4,26,676 allottees. The dates of allotment, number of allottees and funds mobilized has also been collated from documents obtained from MCA 21 portal i.e. FORM 2 (Return of allotment).

15. I therefore conclude that the company came out with an offer of RPS as outlined above. The same finding has been concluded in the final order also.

Issue No. 2- If so, whether the said offer was in violation of Section 56, Section 60 and Section 73 of Companies Act 1956.

16. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the Offer of RPS made to the public. Therefore, the primary question that arises for consideration is whether the issue of RPS is a 'public issue'. At this juncture, reference may be made to Sections 67(1) and 67(3) of the Companies Act, 1956:

"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 sub-section (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)."

17. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. vs. SEBI* (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the "**Sahara Case**"), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration: -

"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is 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 otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of

Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.

The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ... Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.”

18. 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.

19. In the present matter, I find that offer of RPS were made by the company to mobilize an amount of ₹ 444.67 crores from 4,26,676 allottees during FY 2005 to 2009. Further, the Company, being an NBFC, has admittedly made an offer of RPS and allotted 44,46,72,800 RPS to 4,26,676 persons during the Financial Years 2005-2006, 2006-2007, 2007-2008 and 2008-2009. These offers of RPS and allotments as per the Company were made pursuant to the grant of a certificate of registration from the RBI to act as an NBFC. Therefore, for the

Company in order to claim that it had made a “private placement” of such securities, it has to show that it had complied with either clause (a) or (b) of Section 67(3) of the Companies Act, 1956 and further prove that its case fell within the ambit of either of the said clauses.

20. I note here that, the Financial Stability Report (FSR) of the RBI of 2010 records that NBFCs are exempt from the provisions of Section 67 of the Companies Act and that RBI was in the process of formulating guidelines in conjunction with the MCA to plug the contemporaneous regulatory gap;

- the issuance of RBI circulars dated June 27, 2013 and July 02, 2013, for NBFCs made it clear that no restrictions were applicable at the time when the Company issued the RPS.

FSR of the RBI vide the following paragraphs no., states that:

5.62 NBFCs are exempt from the provisions of Section 67 of the Companies Act, 1956, in terms of which issuance of shares/debentures to more than 49 investors needs to be through public issuance. This means that NBFCs, particularly those not regulated by the Reserve Bank, could issue debt or quasi-debt instruments to a large number of retail/institutional investors on a private placement basis. This would be tantamount to raising public deposits outside the extant regulatory framework.

5.63 Specific concerns in this regard have arisen in the past in the context of private placement of Convertible Preference Shares (CPS) by few NBFCs."

21. It can be noted that the focus is on the exemption to NBFCs from the provisions of Section 67 of the Companies Act, 1956 [i.e. second proviso to section 67(3)]. The report does not state that NBFCs are also exempt from satisfying clauses (a) & (b) to Section 67(3) of the Companies Act, 1956. NBFC, prior to June 27, 2013, had to have enough proof that its issue was on private placement satisfying clauses (a) and (b) of Section 67(3) of the Companies Act and from June 27, 2013 onwards had to comply with the restriction of allotting to not more than 49 in a private placement. NBFCs also have restraints in respect of the offer and issuance of securities to the public and these have to necessarily comply with the public

issue norms mandated under the Companies Act, 1956 and the SEBI Act. Further there is no material on record to substantiate that allotment was on private placement as provided under Section 67(3)(a) and (b) of the Companies Act, 1956. In view of the above, it is concluded that the offer and allotment of RPS made by the Company during the Financial Years 2005-2006, 2006-2007, 2007-2008 and 2008-2009, was a 'public issue'. The same is also concluded in the final order.

22. Further Hon'ble SAT vide its order dated June 29, 2018, in this matter upheld the final order findings and held that, *... there is no provision in the 1956 Act which excludes NBFCs from the provisions contained in the 1956 Act. Even the second proviso to Section 67(3) does not exempt NBFCs from the provisions contained in the 1956 Act. In fact the second proviso to Section 67(3) simply provides that the first proviso which provides that an offer or invitation of a company to fifty persons or more persons receiving the offer/ invitation shall be treated to be an offer/ invitation made to public shall not be applicable to NBFCs. It obviously means that the offer/invitation made by NBFCs to more than 49 persons shall not be treated to have been made to the public, provided, the offer/invitation is only to the persons receiving the offer/ invitations.*

23. Therefore, in view of the material available on record, I find that the *Offer of RPS* by the Company is deemed as public issue as there is no proof that, *issue was on private placement as provided under Section 67(3)(a) and (b) of the Companies Act, 1956.* Therefore, company was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956. The same has also been decided vide Final Order. Further Hon'ble SAT has also held in this matter vide its order dated June 29, 2018 that,..... *"In the present case, since the offer/ invitation of the company was not restricted to the persons to whom the offer/ invitation was made, the WTM of SEBI was justified in holding that the company had made the offer to the public without following the provisions applicable to public offer under the 1956 Act."*

24. In view of the RPS by the Company being 'public issue', Section 60 of the Companies Act, thereof, mandates a company to register its 'prospectus' with the

RoC, before making a public offer/ issuing the 'prospectus'. Further as per the section 2(36) of the Companies Act, 1956, "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer of RPS was a deemed public issue of securities, the company was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956.

25. Further, in terms of Section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per Section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. I find that, the Company had admitted that it did not file any 'prospectus' with respect to its offer and allotment of RPS, and therefore the Company has contravened the above provisions of the Companies Act, 1956. I, therefore, find that the company has not complied with the provisions of Section 56 of the Companies Act, 1956. The same has also been decided vide Final Order.
26. Since the offer of RPS was 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 Sections 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 application. However, it was observed from the Annual Report for the financial year 2012-2013 of the Company, that 44,16,46,610 RPS amounting to ₹441.64 crores were outstanding as on March 31, 2012. Further recovery proceeding and necessary action in terms of the final order directions have been initiated against the Company and the respective directors mentioned

in the final order.

27. From the above it is noted that there is no material available on record to substantiate the following,

- 27.1. The allotment by the company being an NBFC was on private placement as provided under Section 67(3)(a) and (b) of the Companies Act
- 27.2. Prospectus in relation to RPS was issued and registered with the RoC as per section 56 and 60 read with 2(36) of the Companies Act
- 27.3. The company has made an application seeking listing permission from any recognized stock exchange as per section 73(1) of the Companies Act
- 27.4. The amount collected through the RPS issues has been refunded to the investors with interest within the stipulated time as per section 73(2).
- 27.5. The amount collected by the RPS issue is kept in a separate bank account as per section 73(3) of the Companies Act

Therefore, I find that the company has contravened provisions contained in section 56, 60, 67, and 73 of the companies Act. The same has also been decided vide Final Order.

28. With respect to the jurisdiction of SEBI over various provisions of the Companies Act, 1956 including the above mentioned provisions, in the case of public companies, whether listed or unlisted, 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 Sahara Case, held 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"

29. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of Companies Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase "intend to get listed" in the context of deemed public issue the Hon'ble Supreme Court in Sahara Case observed-

"...But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, "intent" has its limitations also, confining it within the confines of lawfulness..."

"...Listing of securities depends not upon one's volition, but on statutory mandate..."

"...The appellant-companies must be deemed to have "intended" to get their securities listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have "intended", what was contrary to the mandatory requirement of law..."

30. In view of the above facts and findings, I am of the view that the Company was engaged in fund mobilizing activity from the public, through the offer of RPS and has contravened the provisions of sections 56, 60, 67 and 73 of the Companies Act, 1956. The same has also been decided vide Final Order.

Issue No. 3- If the findings on Issue No. 2 are found in the affirmative, whether Noticees are liable for the violations committed?

31. I note that the Noticees have not made any submissions till date nor appeared for the hearing opportunity granted. I also note that, since the interim order and personal hearing notice could not be served to the Noticees directly, the same was served on the Company for onward delivery to the Noticees. Further

newspaper publications were also made to notify the Noticees about the interim order and opportunity of personal hearing granted. Therefore reasonable efforts have been made to serve, notify and provide opportunity of personal hearing to the Noticees.

32. The Company has vide its letter dated June 02, 2014, replied and submitted that Mr. Sunil Kanti Kar had expired, though, no death certificate was submitted. As regards, other Noticees namely, Mr. Sukrit Sood and Mr. Balvir Singh, the Company replied that they had ceased to be the directors of the Company since April 01, 2006 and October 15, 2013 respectively. As regards, Ms. Ashima Sood it was submitted that she also ceased to be the director of the Company.

33. As per the information available from MCA website the details of the appointment and cessation of the Noticee are as follows:

Noticee/Directors	Date of Appointment	Date of Resignation
Mr. Balvir Singh	02/11/2005	15/10/2013
Ms. Ashima Sood	22/12/1995	01/04/2006
Mr. Sukrit Sood	31/08/2004	01/04/2006
Mr. Sunil Kanti Kar	19/11/2004	08/03/2008

The details of the allotment of RPS on various dates and the amount raised as noted from the MCA 21, Form 2, are as under:

S.No.	Date of issue/allotment of the preference shares	No. of shares of face value ₹ 10/- each approved for allotment	Amount raised (₹)
1.	25/03/2006	46,71,200	4,67,12,000/-
2.	04/06/2006	2,43,25,300	24,32,53,000/-
3.	31/08/2006	3,81,53,400	38,15,34,000/-
4.	14/02/2007	8,34,64,400	83,46,44,000/-
5.	31/05/2007	4,74,67,500	47,46,75,000/-
6.	25/09/2007	5,79,47,500	57,94,75,000/-
7.	29/02/2008	5,01,45,500	50,14,55,000/-
8.	30/06/2008	4,40,50,400	44,05,04,000/-
9.	31/10/2008*	5,42,02,900	54,20,29,000/-
10.	28/02/2009	4,02,44,700	40,24,47,000/-
Total		44,46,72,800	444,67,28,000/-

* As per Form 2 filed with RoC, 5,42,02,900 RPS were allotted on October 31, 2008. The date of special resolution authorising the issue of 5,42,02,900 RPS is February 25, 2008.

34. It was also seen from the Article of Association and the Memorandum of

Association filed with RoC that, Ms. Ashima Sood was the original subscribers of the equity share capital of the Company and was also one of the directors of the Company. I note that Ms. Ashima Sood and Mr. Sukrit Sood resigned from the Company on April 01, 2006, i.e. after the first tranche of allotment of RPS to public on March 25, 2006, Mr. Sunil Kanti Kar resigned from the company on March 08, 2008 after seventh tranche of the allotment of RPS and Mr. Balvir Singh was directors during all the 10 tranches of the allotment of RPS and resigned later on October 15, 2013.

35. It is noted that, sections 56(1) and 56(3) read with Section 56(4) of the Companies Act, 1956 imposes the liability on the Company, every Director, and other persons responsible for issue of the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of registration of the prospectus with the Registrar as per the said provision. Therefore, the Noticees being the Directors of the Company during the respective period when the *Offer of RPS* deemed as public issues made by the Company, are liable for the violation of Sections 56(1), 56(3) and 60 of the Companies Act, 1956.
36. As far as the liability for non-compliance of Section 73 of Companies Act, 1956 is concerned, as stipulated in Section 73(2) of the said Act, the company and every Director of the company who is an *officer in default* shall, from the eighth day when the company becomes liable to repay, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per Section 73 (2) of the Companies Act, 1956, the company and every Director of the company who is an *officer in default* is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of Rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.
37. As per Section 5 of Companies Act, 1956, “*officer who is in default*” means (a) the

Managing Director/s; (b) the Whole-Time Director/s; (c) the manager; (d) the secretary; (e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; (f) any person charged by the Board with the responsibility of complying with that provision; (g) where any company does not have any of the officers specified in clauses (a) to (c), any Director or Directors who may be specified by the Board in this behalf or where no Director is so specified, all the Directors.

38. Further, it is pertinent to note the observation of Hon'ble SAT vide Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, that:

"... In view of the fact that out of the amount of Rs.99.06 lakh, amount of Rs.59.06 lakh was collected by BREDL after the appellant ceased to be a Director of BREDL, counsel for SEBI fairly stated on instruction that the obligation of the appellant to refund the amount with interest jointly and severally with BREDL and other Directors set out in the impugned order may be limited to Rs.40 lakh only, because, that was the amount collected by BREDL during the period when the appellant was a Director of BREDL..."

...Section 5 of the Companies Act, 1956 defines the expression 'officer who is in default' to mean the officers named therein. Section 5(g) provides that where any company does not have any of the officers specified in clauses (a) to (c) of Section 5, then any director who may be specified by the Board in that behalf or where no director is so specified then all the directors would be "officer who is in default". In the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 or any specified director of BREDL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. In such a case, as per Section 5(g) of the Companies Act, 1956 BREDL and all the directors of BREDL are liable...

Admittedly, the appellant was a director of BREDL when amounts were collected by BREDL in contravention of the public issue norms and there is nothing on record to suggest that any particular officer/director was authorised to comply with the public issue norms. In such a case, all directors of BREDL including the appellant would be "officer in default" under Section 73(2) read with Section 5 of

the Companies Act, 1956....”

39. In view of Hon'ble SAT Order dated July 14, 2017, in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the officer in default to refund the amount with interest jointly and severally with the company and other officer in default, is limited to the extent of amount collected during his/her tenure as officer in default of the company.
40. I note that there is no material available on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified Director of the company was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. In such a case, as observed by Hon'ble SAT in the matter of *Manoj Agarwal vs. SEBI* and as per Section 5(g) of the Companies Act, 1956, the company and all the Directors of the company are jointly and severally liable to the extent of amount collected during his/her tenure as officer in default of the company.
41. It is observed that the Company had issued RPS to 4,26,676 investors and total funds raised by issues was ₹444.67 crores. As per material available on record, issuance and allotment of RPS was from March 25, 2006 to February 28, 2009. I note that, as per company submission and material available on record, Mr. Sunil Kanti Kar has expired, Mr. Sukrit Sood and Ms. Ashima Sood resigned on April 01, 2006 and Mr. Balvir Singh resigned on October 15, 2013.
42. In respect to Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh, I note that in accordance with Section 5(g) of Companies Act, 1956, being directors of the company they are also the *officer in default* for the respective allotment and issuance of RPS during March 25, 2006 to February 28, 2009, during their directorship along with the other Directors of the company against whom already a Final Order dated August 14, 2015, has been passed. Therefore, Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh being Directors during the respective RPS issue between March 25, 2006 to February 28, 2009, and *officer in default*, are also liable to make refund of the money collected during respective tenure along with interest at the rate of 15 % per annum, under Section 73(2) of the Companies Act, 1956 for the non-compliance of the provisions of section 73

of the Companies Act..

43. It is noted that the Company and the directors as per the final order have failed to comply with the refund directions, therefore, recovery proceeding has been initiated as per the final order. Further in this regard, it is noted that the Alchemist Group of Companies including Alchemist Holdings Ltd. matter has also been referred to the Justice S.P. Talukdar Committee pursuant to the order passed in the writ petition dated 21th day of December 2017 against the Alchemist Group Company by the Hon'ble High Court of Calcutta.
44. Since, the liability of the company to repay under Section 73(2) of the Companies Act, 1956 is continuing and such liability continues till all the repayments are made, Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh are co-extensively responsible along with the company and its other Directors for making refunds along with interest under Section 73(2) of the Companies Act, 1956 read with Rule 4D of the Companies (Central Government's) General Rules and Forms, 1956. Therefore, I find that Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singhis are jointly and severally liable along with the Company and its other directors, as mentioned in the Final Order dated August 14, 2015, to refund the amounts collected from the investors during respective tenure mentioned in above paragraph, with interest at the rate of 15 % per annum, for the non-compliance of the provisions of section 73 of the Companies Act...
45. Moreover, it is noted that the liability to repay is a statutory liability under Section 73(2) of the Companies Act, 1956, which mandates the repayment to be made forthwith. The present order only enforces the pre-existing liability of the company and other officers in default to repay along with interest. It is an additional liability of every Director on behalf of the company to ensure that the company complies with the obligation under Section 73(2) of the Companies Act, 1956 forthwith. One may argue that the liability of the company is crystalised only by virtue of an Order by SEBI, therefore, till then there was no liability on the company and therefore, on the Directors. If such argument is accepted, all the legal obligations and compliance requirements pose the risk of being not discharged or postponed on the pretext of non-crystallization. Also, it would make the compliance of

regulatory/statutory requirement imposed on the companies bereft of clarity and incentivize delay in compliance of statutory obligation by the companies until such non-compliance is enforced through proceedings such as this. If the Board of Directors of a company cannot be considered to be liable to ensure the legal obligations cast upon a company, there would be no human instrumentality for discharge of such legal obligations on behalf of the company. Considering the fact that the Company has not complied with its obligation to repay the amounts collected in violation of deemed public issue and such liability is continuing, I find that the same can only be ensured by its Directors. In this context, I note from the material available on record that the Noticees being the Directors of the Company during period of offer and issuance of RPS by the Company, have neither taken any steps to ensure that the Company makes the refund to its investors nor have themselves taken any steps to ensure their own liability to refund gets discharged. Thus, it is held that Noticees as Directors of the Company have neglected in taking steps in ensuring the company to repay to the investors during their tenure.

46. In view of the foregoing, the natural consequence of not adhering to the norms governing the issue of securities to the public by the Company and making repayments as directed under Section 73(2) of the Companies Act, 1956, is to direct Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh to refund the monies collected, with interest to such investors. Also, in order to safeguard the interests of investors, to prevent further harm to investors and to ensure orderly development of securities market, Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh becomes liable to be debarred for an appropriate period of time.

47. From the submission of the Company it is observed that the Noticee Mr. Sunil Kanti Kar has expired. Further it is also noted that though the Company has not provided the death certificate, however, the same has been brought out on record vide Adjudication Order/KS/AE/2020-21/9432 dated October 22, 2020 in the matter of Alchemist Infra Realty Ltd. that Mr. Sunil Kanti Kar passed away on July 21, 2012. Therefore, SEBI may examine and proceed with the legal representatives of Mr. Sunil Kanti Kar as per law.

48. In view of the discussion above, appropriate action in accordance with law needs

to be initiated against Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh.

Directions

49. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under Section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11, 11(4), 11A and 11B (1) of the SEBI Act, hereby issue the following directions:

- 49.1. Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh shall jointly and severally along with the Company and its other Directors mentioned in the Final Order dated August 14, 2015, forthwith refund, to the investors, the money collected by the company, during their respective tenure as Directors of Company, through the issuance of RPS (including the application money collected from investors during the tenure as a Director of Company, till date, pending allotment of securities, if any), with an interest of 15% per annum, from the eighth day of collection of funds, till the date of actual payment.
- 49.2. 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 any other appropriate banking channels with clearly identified beneficiaries.
- 49.3. Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh are permitted to sell the assets, properties and holding of mutual funds/shares/securities held by him/her in demat and physical form only for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.
- 49.4. Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses

and contact details, within thirty days of this Order coming into effect.

- 49.5. After completing the aforesaid repayments, Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh shall file a report of such completion with SEBI, within a period of three months from the date of this order coming into effect, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. Such report shall also certify if any previous payments effected, or made as per modes mentioned as para 49.2. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India holding such certificate.
- 49.6. In case of failure of Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh to comply with the applicable directions, SEBI, on the expiry of three months period from the date of this Order coming into effect, may recover such amounts, from him/her of this Order, in accordance with Section 28A of the SEBI Act including such other provisions contained in securities laws.
- 49.7. Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh are also directed to provide a full inventory of all their assets and properties and details of all their bank accounts, demat accounts and holdings of shares/securities/mutual funds, if held in physical form and demat form.
- 49.8. Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh are also restrained from associating himself 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 Order till the expiry of 4 (four) years from the date of completion of refunds to investors.

49.9. Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of the Noticee shall remain frozen.

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

50. I note that Hon'ble Calcutta High Court in Writ Petition no W.P.1389 (W) of 2017 and other connected Writ Petitions vide order dated December 21, 2017, has referred the matter of Alchemist Group of Companies to Justice S P Talukdar Committee. Therefore, the effect and implementation of the aforesaid directions stated in paragraph 49 excluding 49.7 and 49.8 shall be subject to the directions passed till date or any further orders of the Hon'ble High Court or any orders/decisions of the Hon'ble Justice (Retd) S. P. Talukdar Commission appointed in this regard.

51. Copy of this order shall be sent to Mr. Sukrit Sood, Ms. Ashima Sood, Mr. Balvir Singh and legal representatives of Mr. Sunil Kanti Kar.

52. Copy of this Order shall be forwarded to the recognised stock exchanges, depositories and registrar and transfer agents for information and necessary action.

53. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action.

-sd-

DATE: June 18, 2021

PLACE: Mumbai

MADHABI PURI BUCH

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA