# National Stock Exchange of India

## Circular

| Department: Investigation | |
|---|---|
| Download Ref No: NSE/INVG/54616 | Date: November 25, 2022 |
| Circular Ref. No: 183/2022 | |

To All NSE Members,

**Sub**: **Order in the matter of Babanraoji Shinde Sugar & Allied Industries Limited.**

This is with reference to NSE Circular No. NSE/INVG/39930 dated January 11, 2019, in respect of SEBI Order No. WTM/AB/DDHS/15/2018-19 dated January 11, 2019 and Order no. WTM/SM/16/2021-22 dated April 19, 2021 for the entities below.

| Sr. No. | Name of the Entity | PAN |
|---|---|---|
| 1 | Babanraoji Shinde Sugar & Allied Industries Limited | AACCI5569F |
| 2 | Ranjeetsingh Babanrao Shinde | AEHPS6575B |
| 3 | Santosh Vyankatesh Garad | AMLPG0929R |
| 4 | Pranita Ranjeetsingh Shinde | BAKPS4785F |

SEBI now vide its communication dated November 25, 2022, has directed to comply with the directions issued against the entities in the Order dated April 19, 2021 i.e. "to dispose of the present proceedings as well as the interim order dated January 11, 2019."

The detailed order is available on SEBI website (http://www.sebi.gov.in). Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under "Home-Regulation-Members-Action against Members-Regulatory Actions".
Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Abhishek Goenka (INVSG) (Extension: 23449), Mr. Atish Agarwal (Extension: 26026)
Direct No: 022-26598417/18 Fax: 022-26598195

**For and on behalf of**
**National Stock Exchange of India Limited**

**Atish Agarwal**
**Senior Manager**

National Stock Exchange of India

**ANNEXURE: - Order in the matter of Babanraoji Shinde Sugar & Allied Industries Limited**

**WTM/SM/16/2021-22**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

**UNDER SECTION 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:**

| Noticee No. | Name of the Noticee | PAN |
|---|---|---|
| 1. | Babanraoji Shinde Sugar & Allied Industries Limited | AACCI5569F |
| 2. | Ranjeetsingh Babanrao Shinde | AEHPS6575B |
| 3. | Vikramsingh Babanrao Shinde | AWNPS7764G |
| 4. | Santosh Vyankatesh Garad | AMLPG0929R |
| 5. | Pranita Ranjeetsingh Shinde | BAKPS4785F |
| 6. | Santosh Baban Varpe | ADYPV4119L |
| 7. | Bhausaheb Vishnupant Patil | BCMPP6488C |
| 8. | Santosh Hanumant Marathe | BMFPM4838Q |
| 9. | Babanrao Vittalrao Shinde | AABHB9430Q |
| 10. | Sunanda Babanrao Shinde | AJOPS7742L |
| 11. | Amruta Vikramsingh Shinde | - |

*(The above entities are individually referred to by their corresponding names/numbers and collectively referred to as "Noticees")*

1. The genesis of the present proceeding emanating against Babanraoji Shinde Sugar & Allied Industries Limited (hereinafter referred to as **"BSSAIL"** or the **"Company"**), lies in an examination conducted by the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), pertaining to the issuance of Non- Cumulative Redeemable Preference Shares (hereinafter referred to as "**NCRPS**") allegedly in violation of the provisions of the Companies Act, 1956/2013 and the SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations 2013 (hereinafter referred to as "the **NCRPS Regulations**"). Based on the information furnished by the *Company* as well as on the basis of the information about the *Company* as available in the records of the Registrar of Companies ("**RoC**"), an *interim* order dated January 11, 2019 came to be passed.

2. The said *interim* order has observed the following with respect to the issuance of NCRPS by the *Company:*

i. The *Company* has issued NCRPS (redeemable after 20 years from the respective date of allotments) during the financial year 2013-14, 2014-15 and 2017-18. The details of the number of investors/persons/entities to whom NCRPS were issued by the *Company* during the aforesaid period are as under:

**Table no. 1**

| Sr. No. | Financial Year | No. of investors to whom NCRPS issued | Amount raised (INR In Crore) |
|---|---|---|---|
| 1. | 2013-14 | 6986/6842* | 24.47 |
| 2. | 2014-15 | 173 | 14.95 |
| 3. | 2017-18 | 119 | 3.57 |

** There were discrepancies in the information submitted by the Company with respect to the number of investors to whom the NCRPS were issued by it during 2013-14. Even in terms of the information gathered from RoC, the Company had issued NCRPS to 2640 investors and had raised INR 9.28 Crore from such investors.*

ii. The *Company* had issued NCRPS to more than 49 persons during the financial year 2013-14, which was more than the statutory limit of persons prescribed for making private placement of securities under the extant corporate law as applicable to the aforesaid Financial Year.

iii. The said act of issuance of NCRPS to more than 49 persons during FY 2013-14 was deemed to be a public issue of securities.

iv. The *Company*, while issuing its NCRPS to public, did not follow the applicable provisions of the Companies Act, 1956 and the NCRPS Regulations of SEBI, governing issuance of securities to public at large.

3. In the aforesaid *interim* order, after observing that the acts and omissions on part of the *Company* are detrimental to the interest of the investors and the integrity of securities market, certain directions were issued and the *Noticees* were also further asked to show cause as to why the following directions, *inter alia*, should not be issued against them:

*i. Notice 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.*

4. The *interim* order was served upon the *Noticees* and in response thereto, the *Noticees*, vide their letter dated February 11, 2019, have made the following submissions:

i. The *Company* is engaged in the business of sugar and allied industries and primarily deals with farmers in pursuance of its business objective.

ii. In February 2011, the *Company* decided to make offer of NCRPS under private placements basis to the farmers. The *Company* had made more than 150 separate and distinct private offers to less than 49 persons in each of such offers. All such offers have been made on different dates and each of them was separate and individual private placement and none of the said offers has been extended to more than 49 persons.

iii. The relevant provisions of the Companies Act, 2013 came into force only on April 01, 2014. The said provisions and the rules made thereunder, for the first time mandated that in one private placement of securities, the offer cannot be made to more than 200 persons in a financial year. There was no such provision under the Companies Act, 1956 prescribing upper limit to the number of persons to whom securities can be allotted under private placement in a particular financial year.

iv. As the *Company* has at no stage made an offer of securities to more than 49 persons in any of the allotments, the issue of NCRPS during F.Y. 2013-14 cannot be termed to be a public issue of securities. SEBI has ignored that all such offers were separate and distinct; dates of allotment and receipt of money were also distinct. The *interim* order has been issued even against those individuals who were not at all the Directors of the *Company* or were not Director during the relevant period of time.

5. Subsequently, a request for inspection of documents relied upon while passing the *interim* order was received from the *Noticees* and accordingly, the inspection of the documents relied upon in the *interim* order was provided to the *Noticees* on April 25, 2019. Thereafter, the *Noticees* were provided an opportunity of personal hearing and accordingly, the personal hearing in the matter was scheduled on June 26, 2019. However, vide letter dated June 25, 2019, the *Noticees* had informed that they have filed application for Settlement under the SEBI (Settlement Proceedings) Regulation, 2018. In the said letter, the *Noticees* also stated that the documents sought during the inspection of documents (i.e. original complaints received against the *Company;* evidence to show that allotment to more than 49 persons has been made in a single offer etc.), have not been provided to them. The *Noticees* also sought a copy of the General Policy of SEBI issued in September, 2016 as a guidance to deal with respect to the aspect of issuance of securities to more than 200 investors. With respect to the personal hearing, the *Noticees* requested for an adjournment on the grounds of non-availability of the Advocate.

6. The personal hearing of the *Noticees* was again fixed for September 09, 2020, however, for the said date also, a request for adjournment vide letter dated September 03, 2020, was received citing various reasons including the restrictions imposed on movements due to Covid-19. By the said letter, it was also informed that the *Company* has already initiated the process of refund/exit to all the NCRPS holders and payment is being made to those NCRPS holders who have accepted such offer of exit. It has also been submitted that as the PANs of the Directors/Promoters of the *Company* have been frozen, they are not able to open their Demat accounts and thus not in a position to comply with the Exit Offer procedure as laid down under the SEBI's Circular no. CIR/CFD/DIL3/18/2015 dated December 31, 2015. It was also asserted that for certain other

companies involved in similar issues, the proceedings have been disposed of under the settlement mechanism of SEBI.

7. The *Noticees* were advised, vide letter dated September 15, 2020, to file a comprehensive reply to the findings and allegations made in the *interim* order. The *Noticees*, vide their letter dated October 05, 2020, have responded to the aforesaid letter of SEBI and have submitted *inter alia* as:

i. The limit of issuance of securities to more than 49 persons in a financial year, as interpreted by SEBI is wrong, as the provisions of the Companies Act, 1956 did not use the term financial year in the relevant provisions.

ii. The NCRPS were issued by the *Company* to its own suppliers/farmers, which amounts to an issue made by a domestic concern for its own constituents.

iii. In terms of Circular December 31, 2015 of SEBI, it is practiced that no direction is required to be passed for making refunds to the investors, where issuer has given an option to the subscribers to refund along with 15% interest and has also filed an application for compounding for alleged violation before NCLT. The *Company* has in due compliance of the above-mentioned Circular has already given an option to all the NCRPS holders and has also filed an application for compounding before NCLT. A certificate from a Peer Reviewed Company Secretary has also been filed along with copy of acknowledgment of filing of compounding.

iv. The transfer of NCRPS (from holders to the *Company)* could not be made effectively despite having offered them to make refund of the money due to the fact that Demat accounts could not be opened in the name of the *Company* because of the restraint imposed by the *interim* order.

v. In the past also, no directions for making refund have been issued against various similarly placed companies like Security and Intelligence Services (India) Limited etc.

vi. In the certificate issued by the Peer Reviewed Company Secretary, it has been certified that the *Company* had issued 2, 44, 74, 956 shares (NCRPS) to certain individuals. It has also been certified that the *Company* has given option to such holders of NCRPS to exit along with interest @15% per annum. The exit offer letters were issued to 853 NCRPS holders (currently holding such NCRPS) between the period of June 28, 2019 to July 05, 2019 and the exit offer was open for acceptance for 15 days. In pursuance of the same, the investors who expressed their willingness to exit have been given exit. Further, 14 NCRPS holders did not respond and rest 829 NCRPS did not accept the exit offer. The payment to the NCRPS holders who have accepted the exit offer has been made through RTGS mode.

8. A personal hearing in the matter was accorded to the *Noticees* on January 21, 2021, through Video Conferencing mode. However, as the *Noticees* could not connect through their network system on the said date, the hearing was re-scheduled to January 29, 2021. On the said date of hearing, the *Noticee no. 2* and the Authorised Representatives on behalf of the *Noticee no. 1* appeared and made oral submissions on the lines of their written replies already filed earlier. During the course of hearing, certain queries were posed to the said Authorised Representatives. Vide its letter dated February 19, 2021, the *Noticee no.1* has furnished its response/information with respect to a few of those queries while for the rest of the queries, additional time has been requested. Further, vide another letter/email dated April 09, 2021 received from the *Noticee*, reliance has been placed on an order dated March 31, 2021 passed by SEBI so as to contend that enforcement actions have been initiated in similar cases only if the issuer company did not comply with the requisite conditions of offering exit, filing application before National Company Law Tribunal, etc.

9. I have gone through the material available on record including the *interim* order, responses made by the *Noticees* herein, etc. A perusal of the record indicates that the *Noticees* have been charged for acting in violation of law under Section 56, 60, 67 and 73 of the Companies Act, 1956 read with various regulations of the NCRPS Regulations as stated in the *interim* order cum SCN issued in the matter. Having gone through the relevant provisions of law alleged to have been violated, it is observed that Section 67(3) of the Companies Act, 1956 originally contemplated a situation when, an offer or invitation would not be considered as an offer or invitation made to public even though it has been made to a section of public. As per the said sub-section, in case an offer or invitation which does not result, directly or indirectly, in making the shares or debentures of the company becoming available for subscription or purchase by persons other than those receiving the said offer or invitation, then such an offer or invitation of shares or debenture would not be treated as an offer or invitation made to public. The provision further encapsulates that such offer or invitation will not be considered as public offer, in the event where the offer is made by the domestic concern of the persons making and receiving the offer. The law thus provides that an offer or invitation in such conditions/situations would be considered as private placement of shares or debentures and not an offer or invitation to public. Thus, Section 67(3) envisages that there can be a scheme of raising of funds by a company privately, from informed investors or

relatives/friends of promoters, who are capable of taking informed decisions on the basis of Letter of Offer or Information Memorandum issued by the company. However, subsequently an amendment was made in the provisions of the Companies Act, 1956, vide which a proviso to Section 67(3) was inserted w.e.f. December 13, 2000, whereby it was prescribed that where, such an offer or invitation to subscribe to the shares or debentures is made by a company to fifty persons or more, it shall be deemed that the said offer or invitation has been made to public. The intent and spirit behind the Section 67(3) was clearly not to burden such private placements with regulatory supervision and compliances, since, the number of investors involved is restricted to known/ pre-identified persons and the public at large is not involved. However, as the first proviso to Section 67(3) inserted in the year 2000 has restricted this private placement to 49 persons only, once the offerees or invitees would exceed 49 persons, then such a private placement is to be deemed as public issue. In such a case, the regulatory supervision becomes more onerous as various mandatory requirements pertaining to the preparation of prospectus, filling of draft prospectus with SEBI, registration of prospectus with RoC, mandatory listing of securities on stock exchange etc., would *suo motto* come into operation thereby making it incumbent on such company who has made such an offer or invitation to more than 49 persons, to make application for listing of such shares or debentures offered to the public, to one or more recognized stock exchanges in compliance with various statutory provisions and rules/regulations made thereunder, failing which, the company has to confront necessary consequences envisaged under the provisions of law including the liability to refund the money so mobilised, collected or raised by such issuance of shares or debentures.

10. The records before me show that the *Company* has been alleged to have issued securities to more than the stipulated number of person or entities as envisaged under the proviso to Section 67 (3) of the Companies Act, 1956. I further note that the *Company* has not disputed the issuance of securities, however, it has vehemently denied having acted in defiance of law governing the issuance of securities at the relevant point of time. While contesting the violations as alleged in the *interim* order, the *Company* has submitted that the said issuances of NCRPS were in fact private placement of preference shares issued to known and identified individuals, at their request, who were mainly the farmers related to sugar cane industries. It has further been submitted that the *Company* had not made any public issue of NCRPS as the *Company* had at no point of time allotted securities to more than 49 people and therefore, the requirement of filing prospectus, application to Stock Exchanges for listing of securities etc., did not arise.

11. I note that the *Company* while denying that it has ever acted in violations of laws as alleged in the *interim* order, has further attempted to justify the circumstances causing the issuance of those securities. In this respect, it has been submitted that the said *interim* order deserves to be set aside for the reason that no inquiry or examination was undertaken before issuance of the *interim* order. It has been submitted that the *Company* had issued securities to persons who are known and identified people and are associated with farming of sugar cane and activities incidental to the production of sugar cane.

12. As noted above, the *Company* denies having issued securities in violation of laws, and at the same time vehemently contests the measures undertaken and directions issued through the said *interim* order passed against them. I further note that in order to buttress and supplement the submissions so advanced, the *Company* has drawn my attention to the content and intent of SEBI's Circular dated December 31, 2015 and practice reportedly followed thereafter by SEBI to deal with the issuance of securities by several other companies in similar manner, as has been done by the *Noticee Company*. The *Company* intends to take shelter under the plea that the imputed issuance of securities is confined to a solitary financial year, during which it had allegedly issued securities to more than the stipulated numbers provided under the provisions of the Companies Act, 1956, although it had no intention to defraud any investors. It has been contended that even the *interim* order has not recorded any subsequent/continued violation on its part and there is no investor complaint pending against it, which could have warranted initiating measures by way of issuance of *interim* order. The *Noticee Company* submits that the *interim* order itself records that the *Company*, after notification of provisions of the Companies Act, 2013, issued securities to 173 and 119 persons only, which are well within the permissible limit provided under the amended provision of the law. The provisions under the previous Companies Act; did not provide any such limitation in specific terms, whereby it can be said that issuance of securities to more than 49 persons in a calendar year or financial year was specifically prohibited. A provision under the Companies Act, 2013, for the first time provides that in a financial year, issuance of securities to persons more than the prescribed number of 200 persons is prohibited. Thus, considering the increase in the aggregate statutory cap for issuance of securities through private placement from 49 to 200 persons and also the fact that the number of persons to whom a company can issue securities in a year was fixed for the first time by a specific provisions brought under the Companies Act, 2013, SEBI had come out with a Circular in December 2015 providing a mechanism to deal with such companies who had issued securities to more than the permissible number of 200 persons, to settle and dispose of

their cases under the extant mechanism without having to resort to any regulatory measure in exercise of powers vested under Section 11 and 11B of the SEBI Act.

13. It has further been submitted by the *Noticees* that pursuant to the issuance of the above mentioned circular, it was thought fit by SEBI through an internal policy decision that in certain types of cases, wherein the entities were noticed to have issued securities to more than the stipulated number of 200 persons as prescribed under the Companies Act, 2013, however, where no continued violation is noticed; the investors complaints have been duly resolved; the investors have been given exit option by such entities to surrender the issued securities to receive refund amount in terms of the above referred December 2015 circular and the issuer companies have also filed an application with National Company Law Tribunal (hereinafter referred to as "**NCLT**") seeking compounding of such violation/non- compliances, it would be appropriate that instead of proposing for initiating regulatory measure, an adjudication proceedings could be initiated against such delinquent entities. In this respect, the *Noticee Company* has further filed before me a compilation of cases/instances *inter alia* mentioning the names of Malabar Institute of Medical Sciences Limited and Security and Intelligence Systems India Limited etc., wherein the issuer entities akin to the *Noticee* herein, had issued securities to more than the stipulated permissible number of persons. However, in those cases, following the afore-cited internal policy guidance, a decision was taken to avoid resorting to regulatory measures in such matters and accordingly such issuer companies have been instructed to take appropriate remedial measures to provide exit option to their holders of securities in the manner so as to meet the above noted pre-conditions.

14. On the basis of the foregoing submissions and the reliance placed by the *Noticees* on the so called internal decision purportedly taken by SEBI to deal with such similarly places matters of issuances of securities in violation of the provisions of Companies Act, the *Noticee Company* has pleaded that it's case also falls into a solitary instance where it had allegedly issued securities to more than the permissible stipulated number of persons/investors in case all the allottees of NCRPS during the financial year are aggregated together. However, at the same time, the said issuances of securities were not in breach of the permissible limits under the provisions of the Companies Act, 1956, as none of the individual allotments made by it was beyond the limit of 49 persons. Notwithstanding the aforesaid assertions, as mentioned above, the *Noticees* have also relied upon on a Policy decision of SEBI, in terms of which the *Noticees* have claimed before me that no case can be made out against them as they have complied with all the requirements/pre-conditions set out in the said internal Policy. The said compliances, as per the *Noticees* include providing an

option to exit to the current NCRPS holders, filing application in NCLT for compounding of violation of provisions of the Companies Act, 1956 and obtaining necessary compliance certification from a Peer Reviewed Company Secretary. Apart from the above, the *Noticees* have filed copies of communications exchanged by SEBI with those similarly placed companies/entities to whom administrative instructions have been issued to comply with the above mentioned conditions. Arguing fiercely that it is also identically placed like those companies who have been issued necessary instructions in terms of the said Policy, the issuance of an order to the *Noticees* invoking power bestowed under Section 11 and 11B of SEBI Act for the protection of interest of investors of securities market, is not warranted as the said objective can be achieved through ensuring compliances in terms of the above noted Policy formulated subsequent to the Circular of December 2015.

15. To sum up, the *Noticees* claim parity with similarly placed issuer companies stating that the object of the above noted Policy and the intent behind issuing directions under the *interim* order are the same. I note that the *interim* order has recorded in details as to how the *Noticee no. 1 Company* has allotted NCRPS by allotting such securities in different allotments, however, each of the allotments have been made to less than 50 persons. It is also noted that the Peer Reviewed Company Secretary has certified that the investors who are at present holding the NCRPS have been offered the opportunity of exit. I further note that although initially the NCRPS were allotted to more than 6000 individuals, which formed the basis of the issuance of the *interim* order in the present matter, as per the claim of the *Noticees*, a large number of such individuals to whom such NCRPS were originally allotted, have transferred their NCRPS to other such holders, and at present, there are only 850 (approx.) NCRPS holders. In support of the same, the *Company* has furnished a sample set of transfer deeds to show as to how the NCRPS have been transferred *inter-se* amongst the NCRPS holders, over the years after the original issuance of such securities.

16. I observe that in the present proceedings, the *Noticees* have made reference to certain cases, which the *Noticees* assert to be identical to their case. I also note that while some of such cases are covered under the orders made under SEBI (Settlement Proceedings) Regulations, 2018 for which the information is available in public domain, with respect to some other matters which have been stated to be identical to the matter pertaining to the *Noticees* and to whom administrative letters have been addressed in terms of an internal policy decision as claimed by the *Noticees* before me, only limited information and documents have been made available to me, which are not sufficient to arrive at any definite conclusion. Notwithstanding the same, the submissions of the *Noticees* with

reference to the SEBI's Circular dated December 31, 2015 and a policy decision purportedly taken by SEBI thereafter, have been considered. I find that SEBI vide its Circular dated December 31, 2015, (at para 2 of the said Circular), had *inter-alia* mandated the following: "…*Considering the higher cap for private placement provided in the Companies Act, 2013, it has now been decided that in respect of earlier cases involving issuance of securities to more than 49 persons but up to 200 persons in a financial year, the companies may avoid penal action if they provide the investors with an option to surrender the securities and get the refund amount at a price not less than the amount of subscription money paid along with 15% interest p.a. thereon or such higher return as promised to investors."*

17. Thus, as far as the said Circular is concerned, I find that the afore-cited special dispensation for avoidance of penal action was granted to those companies which have issued securities on a private placement basis to more than 49 persons but less than 200 persons. I find that in the instant case, the *Noticee Company* had issued securities too far in excess of 200 persons during the F.Y. 2013-14, which is the subject matter of the present proceedings. However, in this regard also, the *Noticees* have made strenuous efforts to draw my attention to a Policy decision purportedly taken by SEBI in terms of which a few other issuer companies, who are similarly placed with the *Noticee Company* herein, and had also issued securities to more than 200 persons in a year, have been granted relaxation in terms of the above mentioned Circular, reportedly on the grounds that there was no alleged continuous violation as well as no pendency of the investor's complaint etc.

18. The examples of few of those similarly placed issuer companies mentioned before have been carefully considered however, there is no clarity as to exactly under what facts and circumstances and under what objective consideration, the said issuer companies as named by the *Noticees* before me, have been granted relaxation from the penal action by SEBI. Further complete details are not available on record in the present quasi-judicial proceedings to arrive at a conclusive verdict with respect to the degrees of similarity or of differentiation, between the said issuer companies and the *Noticee Company* herein. However, the *Noticee Company* has vehemently argued before me that it deserves parity with those issuer companies in terms of the aforesaid Circular read with the internal policy decision purportedly taken by SEBI to deal with these types of matters.

19. The *Noticees* have also made a fervent appeal that the objectives listed under the directions already issued or proposed to be issued as per the *interim* order can also be achieved by enforcing due compliance with the Circular of December 2015 and the internal policy framed by SEBI to

deal with occasions where entities are seen to have issued securities in breach of provisions of Section 67 (3) of the Companies Act, 1956. In this respect, while considering the directions proposed to be issued in terms of the *interim* order, as highlighted by me at para 3 of this order, I note that the *Noticees* claim to have already made an offer to the subscribers to exit by paying the amount with interest @ 15 p.a deserves consideration. In addition to that the *Noticees* have also claimed to have filed an application before the NCLT praying for compounding of the violations alleged in the interim order cum SCN issued in the matter. I also note that the *Noticees* have been put under restraint vide the *interim* order and such restraint is now in operation for more than 2 years. Under the circumstances, I find that the contentions of the *Noticees* do not require further adjudication in view of the fact that *Noticee no.1* is claiming parity of treatment under the 2015 Circular and the internal policy based on its admitted premise that it had also issued securities to persons more than the prescribed number, stipulated under the corresponding governing provisions of law. The said contention of the *Noticees* has further been settled by way of bringing in appropriate provisions under the provisions of Companies Act 2013, by making the legislative intent explicit, what was already implicit under the proviso to Section 67 (3) of the old Companies Act.

20. In the light of the aforesaid discussions, in my considered view the objective of the instant proceedings would be achieved and the end of justice would be adequately met, in case the claim of the *Noticee Company* for parity with certain similarly placed issuer companies who have been dealt with by SEBI in terms of an internal policy is ordered to be examined and the information submitted by the *Noticee Company* before me in support of its claim of having taken steps in compliances with the said internal administrative policy is ordered to be evaluated by SEBI so as to verify the claim of the *Noticee Company* of having acted in pursuance of the said internal policy. The aforesaid claim made before me by the *Noticee Company* during the present proceedings is supported by voluminous record, the adjudication of which is beyond the remit of the present proceedings, as the same warrants verification of numerous factual details like the exit option provided by the *Noticee Company* to the subscribers, refunds made to such holders who availed the exit option; transfer of NCRPS from original subscribers to the current holders and their present status etc., which need to be examined and verified afresh. Under the circumstances, I deem it fit in the interest of justice to dispose of the present proceedings as well as the *interim* order with the following directions:

i. The information submitted by the *Noticees* during the present proceedings will be examined in detail by SEBI, which shall include but not be limited to the aforesaid claim of the *Noticee Company*.

ii. The *Noticees* are at liberty to supplement the information already provided, within a period of 30 days and shall co-operate and provide the necessary information within reasonable time as and when asked to furnish by SEBI.

21. This order shall not preclude SEBI from initiating action, in case the claims made by the *Noticee Company* is not found to be in compliances with the law, rules or regulations made thereunder and is further without prejudice to the rights of SEBI to initiate any appropriate action, as deemed fit under the extant provisions of law, after the examination of the said information is complete.

22. The Order shall come into force with the immediate effect.

23. A copy of this Order shall be forwarded to all the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

**DATE: APRIL 19TH , 2021** **S. K. MOHANTY**

**PLACE: MUMBAI** **WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**