National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/56055	**Date: March 20, 2023**
Circular Ref. No: 75/2023	

To All NSE Members,

Sub: **SEBI Order in respect of Balvir Singh in the matter of Alchemist Holdings Limited**

SEBI vide its order no. WTM/AN/ERO/ERO/24772/2022-23 dated March 20, 2023 has restrained and prohibited entity Mr. Balvir Singh (PAN:AAAPS5463P) from buying, selling or otherwise dealing in securities, in any manner whatsoever, directly or indirectly, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors.

The order comes into force with immediate effect.

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. Ritik Bhriegu (Extension: 23020), Mr. Sandesh Sawant (Extension: 22383)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

National Stock Exchange of India

ANNEXURE: SEBI Order in respect of Balvir Singh in the matter of Alchemist Holdings Limited

WTM/AN/ERO/ERO/24772/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 11 AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

Balvir Singh

PAN: AAAPS5463P

DIN: 00139599

In the matter of Alchemist Holdings Limited

A. BACKGROUND

1. Alchemist Holdings Limited ("**AHL**") had issued redeemable preference shares ("**RPS**") to 4,26,676 investors during the years 2006 to 2009 and raised funds amounting to INR 444.67 crores. Mr. Balvir Singh ("**Noticee**") was a director of AHL for a substantial part of the period when such RPS were offered by AHL *(specific tenure of the Noticee is discussed in detail in succeeding paragraphs of this Order)*.

2. An Interim Order cum show cause notice was passed by WTM against AHL and 7 of its directors including the Noticee on September 20, 2013 ("**Interim Order**") bearing reference no. WTM/SR/CIS-NRO/22/09/2013, for non-compliance with public issue provisions under the Companies Act, 1956 ("**Companies Act**") including sections 56, 60, 69 and 73. The directions in the Interim Order *inter alia* prohibited AHL and its directors including the Noticee from collecting money from investors till further orders and they were directed to show cause as to why appropriate actions under SEBI Act should not be taken against them for non-compliance with the aforesaid provisions.

3. Thereafter, a final order was passed by WTM against AHL and its directors excluding the Noticee, amongst others, dated August 14, 2015 bearing reference no. WTM/PS/38/NRO/AUG/2015 ("**2015 Final Order**"), wherein it was held that AHL had failed to comply with section 67(3)(a) and (b) of the Companies Act. Accordingly, RPS issued by AHL was deemed as a public issue. The 2015 Final Order also found that consequently AHL had violated sections 56, 60, 69 and 73 of the Companies Act. In the said order, WTM had recorded that the Interim Order and hearing notices could not be served upon certain directors including the Noticee and that therefore, before proceeding further against the aforesaid persons, SEBI should take steps to complete service of the Interim Order.

4. Subsequently, an appeal (bearing appeal no. 423 of 2015) was filed by AHL and Mr. Chandra Shekhar Chauhan, one of the directors of AHL against the 2015 Final Order. Hon'ble Securities Appellate Tribunal ("**SAT**") *vide* order dated June 29, 2018 ("**2018 SAT Order**"), upheld the 2015 Final Order but set aside the direction to pay interest *'compounded at half yearly intervals'.* The order passed by Hon'ble SAT was appealed before the Hon'ble Supreme Court. The Hon'ble Supreme Court, by an order dated November 25, 2019 ("**2019 SC Order**"), refused to interfere with the 2018 SAT Order.

5. On June 18, 2021, WTM passed an order against the remaining directors of AHL including the Noticee wherein they were found liable for violation of the aforesaid sections ("**2021 WTM Order**"). The 2021 WTM Order *inter alia* passed the following directions against AHL and its directors including the Noticee:

> *"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.*
>
> *…*

49.8. 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."

6. Against the 2021 WTM Order, an appeal was preferred before the Hon'ble SAT (appeal no.168 of 2022). Hon'ble SAT *vide* order dated May 31, 2022 ("**2022 SAT Order**"), *inter alia*, held the following:

"5. Having heard the learned counsel for the parties, we find that no steps were taken by the respondent pursuant to the WTM's order dated 14th August, 2015 to serve the appellant as per the procedure provided under Rule 7 of the Rules of 1995.

…

7. We find that in the instant case no steps have been taken to serve the appellant under clause (a), (b) and (c) of Rule 7 of the Rules of 1995. Without taking steps under clause (a), (b) and (c), the respondent cannot directly take steps under clause (d) of Rule 7 of the Rules of 1995. Such procedure taken by the respondent is incorrect and cannot be sustained. We also find that the appellant had in their possession the correct address as is clear from the application filed by the respondent before the Patiala House Court, New Delhi….

8. In view of the aforesaid, we are satisfied that the appellant was not served with show cause notice nor any sufficient opportunity was given to him to contest the matter. Consequently, the impugned order, being violative of the principles of natural justice as envisaged under Article 14 of the Constitution of India, cannot be sustained and is quashed insofar as it relates to the appellant. The appeal is allowed. The matter is remitted to the respondent to decide the matter afresh after serving a show cause notice to the appellant. In this regard, the appellant shall appear before the WTM on 30th June, 2022 on which date the respondent shall serve a copy of the show cause notice and, thereafter proceed in accordance with law. Any bank account, demat account attached shall be defreezed and lifted forthwith. All the misc. applications are accordingly disposed of."

7. In line with directions of Hon'ble SAT, the present order is being passed after deciding the matter afresh.

B. SHOW CAUSE NOTICE, REPLY AND HEARING

8. In accordance with the directions of Hon'ble SAT, the Noticee appeared before SEBI on June 30, 2022, and he was given a copy of the Interim Order cum Show Cause Notice ("**SCN**").

9. *Vide* email dated July 14, 2022, the Authorized Representatives ("**ARs**") of the Noticee requested inspection of documents, which was granted on August 17, 2022. Further, certain documents were sent by email to the Noticee and ARs on September 02, 2022. *Vide* email and letter dated September 19, 2022, the Noticee submitted his reply.

10. *Vide* email dated October 31, 2022, the Noticee and ARs were informed that an opportunity of hearing is granted to the Noticee on November 17, 2022. On November 17, 2022, ARs of the Noticee appeared before me. During the hearing, ARs reiterated the submissions made by the Noticee *vide* email and letter dated September 19, 2022. Further, ARs were informed that request of the Noticee to provide certain documents as per email sent on July 14, 2022 shall be examined and relevant and relied upon documents shall be forwarded, if not provided earlier. *Vide* email sent on November 25, 2022, additional documents were provided to the Noticee. *Vide* reply email and letter dated December 05, 2022, the Noticee filed his additional submissions. Additional documents that are publicly accessible on the Ministry of Corporate Affairs ("**MCA**") website were also provided to the Noticee *vide* email dated January 16, 2023. Reply to the same was received on January 24, 2023.

11. *Vide* his submission dated January 24, 2023, the Noticee requested for an opportunity of physical inspection of originals in possession of SEBI which are relevant and relied upon in the proceedings, an opportunity to cross-examine the author, signatory and verifier of the documents on which SEBI seeks to rely upon or an opportunity of hearing in case the WTM does not intend to provide an opportunity of inspection and cross-examination. On February 08, 2023, an opportunity of hearing was provided to the Noticee wherein ARs reiterated their earlier submission. During the hearing, ARs were informed that inspection of the following originals may be availed by them on February 10, 2023 at the SEBI office: (i) examination report; (ii) letter by AHL dated June 02, 2014, which was availed by them. The ARs were specifically informed that SEBI cannot give inspection of original documents not in its possession which may have been filed by AHL with Registrar of Companies ("**RoC**"). Pursuant to the hearing, the ARs submitted their reply on February 17, 2023.

12. The submissions/replies of the Noticee are summarized below:

12.1 <u>Documents not provided during inspection</u>

(i) Reliance is placed on judgment of Hon'ble Supreme Court in T.Takano vs. SEBI (2022 SCC Online SC 210) wherein it was *inter alia* held that SEBI has duty to disclose all material in its possession and merely stating that it has not relied upon certain material would not exempt it from its liability to disclose, if the material is relevant and has nexus to the action taken by the authority. SEBI has not even provided documents upon which “reliance” has been placed for issuance of the Interim Order.

(ii) *Vide* letter dated July 14, 2022, the Noticee had sought inspection and copy of documents, however, inspection and copies of certain limited documents were provided to the Noticee on August 17, 2022. During the hearing on November 17, 2022, WTM had stated that additional documents would be provided to the Noticee, which were sent *vide* email dated November 25, 2022, however, the additional documents sent were partial and did not include all documents that were sought *vide* inspection letter. List of documents not provided by SEBI are as follows:

TABLE 1

#	Document requested	Reference	Status
1.	Copy of letter of AHL dated June 04, 2014 and copies of annexures attached with it.	Interim Order and/or 2021 WTM Order as set aside by 2022 SAT Order.	Not provided by SEBI.
2.	Copy of the resolution passed by the board of directors of AHL with regard to issuance of RPS on June 04, 2006, August 31, 2006, February 14, 2007, May 31, 2007, September 25, 2007, February 29, 2008, June 30, 2008, October 31, 2008, February 28, 2009 and Form 2 filed with the RoC with these resolutions.	Paragraph 14 of the Interim Order.	Original not shown by SEBI and only copy provided.
3.	A copy of the financial stability report of 2010 and circulars of Reserve Bank of India (RBI) relied upon by SEBI in the proceedings of AHL.	2021 WTM Order as set aside by 2022 SAT Order.	Not provided.
4.	A copy of all the documents received, communications made by SEBI with any person in respect of the present proceedings, not provided along with Interim Order including that with the auditors, custodian or other employees and directors of AHL, if any.	Interim Order.	Not provided.
5.	Copy of any statement recorded by SEBI with respect to these proceedings.		Not provided.
6.	Copy of order appointing investigating authority.		Not provided.
7.	Order of the competent authority approving initiation of any enforcement action in respect of the Noticee.		Not provided.
8.	Any adverse material available on record or any document filed by any other noticee evidencing the signatures or presence of		Not provided.

#	Document requested	Reference	Status
	the Noticee in relation to the allegations in the Interim Order.		
9.	Any document or statement evidencing any financial transaction with the Noticee.		Not provided.
10.	Copy of all other documents that are in SEBI's possession in relation to the present proceedings including external communications, file notings insofar as it relates to the Noticee from 2013 till date.	Interim Order.	Not provided.

(iii) Documents provided by SEBI cannot be relied upon without the presence of original for verification. In the present instance, SEBI has provided board resolution of AHL where the date of appointment of the Noticee is provided as April 01, 2006, however, the Noticee was issued his appointment letter on May 01, 2006 and the same was annexed with the first reply filed by the Noticee.

(iv) Reliance is also placed on the following decisions:

(a) SEBI vs. Price Waterhouse (2017 SCC OnLine SC 68) wherein it was held that all documents collected during investigation shall be permitted to be inspected by the respondents. Further, all statements on which reliance has been placed, shall be offered for cross-examination.

(b) Mayrose Capfin Private Ltd. vs. SEBI (2012 SCC OnLine SAT 50), wherein it was held that an adjudicatory body cannot base its decision on any material unless the person against whom it is sought to be utilized is apprised of it. This principle has been reiterated in several decisions wherein non-disclosure of material to affected party has been held fatal to validity of hearing proceedings.

12.2 <u>Documents provided by SEBI *vide* emails dated November 25, 2022 and January 16, 2023 are unreliable</u>

(i) Documents were provided by SEBI *vide* email dated September 02, 2022 and *vide* the aforesaid emails sporadically. SEBI cannot keep on improving its case beyond the SCN.

(ii) The documents provided by SEBI *vide* the aforesaid emails are unreliable as they are contrary to its submission in affidavit of reply filed before the Hon'ble SAT dated May 15, 2022. The Noticee has not been provided an opportunity to cross-examine the author of such documents and proof of its contents have not been verified by forensic/expert evidence. A certified copy of the said documents has also not been provided. In absence of primary evidence and proof of authenticity of documents, benefit of doubt must be provided to the Noticee.

(iii) Further, even if it is assumed the aforesaid documents are reliable, they cannot be relied upon by SEBI to arrive at any finding against the Noticee as they were neither part of SEBI's investigation nor do they do not form part of the SCN.

12.3 <u>Delay in issuance and service of the Interim Order</u>

(i) Majority of allegations sought to be levied by SEBI transpired in the year 2006, *i.e,* 7 years prior to issuance of the Interim Order on September 20, 2013. The Interim Order was ultimately served on the Noticee on June 30, 2022, *i.e,* 16 years after occurrence of alleged events that are violative of Companies Act. The initiation of proceedings and serving of Interim Order regarding events more than 10 years old, severely prejudices ability of the Noticee to adequately respond to the allegations.

(ii) Reliance is placed on the following decisions of Hon'ble SAT:

(a) Ashlesh Gunvantibhai Shah vs. SEBI (2020 SCC Online SAT 30), wherein there was a delay of 7 years in issuance of SCN and Hon'ble SAT set aside the order of adjudicating officer because of delay, holding that, even though there is no limitation period prescribed in the SEBI Act and regulations in the issuance of a SCN or for completion of the adjudication proceedings, the authority is required to exercise its powers within a reasonable period.

(b) Sanjay Jethalal Soni vs. SEBI (2019 SCC Online SAT 247), wherein Hon'ble SAT set aside the order of the adjudicating officer on the ground of the proceedings being initiated after more than 6 years. It held that while issuing second SCN, SEBI was aware of the alleged violation and therefore there was no justification for waiting for more than 5 years to issue a second SCN in 2017.

(c) Libord Finance Ltd. vs. Whole Time Member, SEBI (2008 SCC Online SAT 46), wherein Hon'ble SAT held that issuing SCN in June 2004, when violation pertains to the year 1996, itself causes grave injustice to the delinquent and results in violation of principles of natural justice. Hon'ble SAT also observed that there was no explanation given for delay in commencement of investigation (between 2002 and 2003). Hon'ble SAT further held that the appealed order cannot be sustained due to the inordinate delay in initiating action against the appellant when certificate of registration had already expired.

(d) Rajeev Bhanot vs. SEBI (2021 SCC Online SAT 888), wherein Hon'ble SAT without going into the merits of the case, on account of inordinate delay in initiation of proceedings, quashed the SCN and the order passed by the adjudicating officer. In the said order, Hon'ble SAT relied upon its earlier order of Ashok Shivlal Rupani vs. SEBI (Appeal no. 417 of 2018), decision dated August 22, 2019.

The delay in adjudication proceedings and SEBI's failure to provide copies of documents enlisted above has adversely affected ability of the Noticee to fully present his case and is in violation of the principles of natural justice. On basis of the above decisions and principles of natural justice, Interim Order is liable to be quashed.

12.4 <u>The Noticee was not a *de facto* director in AHL</u>

(i) Interim Order has failed to consider that the Noticee has not carried out his duties as director, managing director or any other designated person, apart from carrying out his duties as an employee of AHL. The Noticee was appointed as a senior regional manager in the Alchemist group on September 12, 2003. Over the years, the Noticee worked as an ordinary employee in different positions and in different companies of Alchemist group having Mr. Kanwar Deep Singh as the managing director.

(ii) The Noticee was appointed as an executive director of AHL with effect from May 01, 2006. Despite change in designation, the Noticee continued to work and be considered as an ordinary employee of AHL which is evidenced from his salary slips. The Noticee resigned from the post of a director with effect from October 15, 2013.

(iii) The Noticee did not take any decisions for AHL. The Noticee was an ordinary employee who was paid a salary, he was neither provided any sitting charge nor any additional remuneration for discharging his duty as a director of AHL. The position of the Noticee as merely of an employee is evident even through the appointment letter issued by AHL. The Noticee did not receive any portion of net profit or fees for attending the board meetings of AHL. Salary of the Noticee was revised by AHL like any other ordinary employee without the same being referred to the board of directors of AHL as is usually done in case of directors. The Noticee was posted in Kolkata, whereas registered office of AHL was in Delhi which shows that the Noticee was not a *de facto* director of AHL but an ordinary employee.

(iv) A copy of income tax returns of the Noticee are annexed for consideration to establish that the Noticee received no money other than his salary. At no point in time from the years 2006-07 to 2011-12, the Noticee was provided more than Rs 2 lakhs per month as a salary as per his employment terms.

12.5 <u>The Noticee was not an "officer of default" of AHL in terms of the Companies Act</u>

(i) In SEBI vs. Gaurav Varshney (2016 SCC Online SC 706), Hon'ble Supreme Court has clarified that before fixing personal liability for breaches of law by a company, it is mandatory that the person on whom such liability is sought to be fixed, is in charge and is responsible for the conduct of the business of a company. The designation or status of such an individual is irrelevant.

(ii) In Pritha Bag vs. SEBI (2019 SCC Online SAT 110), Hon'ble SAT while considering similar facts held that where the company intends to offer shares to the public for subscription which has not been done by issue of a prospectus or where permission has not been sought from the stock exchange, the company and other directors of the company who is an officer in default shall be jointly and severally liable to repay that money alongwith interest. In Subhra Jyoti Sardar vs. SEBI (2021 SCC Online SAT 734), Hon'ble SAT has held that a director can be considered as an officer in default only if it is found that he was involved in day-today affairs of the management of the company. Further, in the said case the Hon'ble SAT considered presence of a managing director in the company as a determining factor since it is the managing director who was overall responsible for the actions of the company. Therefore, the Noticee can be held liable only if he was an "officer in default".

(iii) Section 5 of Companies Act provides the definition *of "officer who is in default*". The provision of Companies Act under consideration clearly provides that only a director who is also an officer in default shall be held liable to repay the monies raised on behalf of AHL.

(iv) The Noticee was an employee of Toubro Infotech & Industries Ltd. and subsequently of AHL having one Mr. Kanwar Deep Singh as the managing director. The Noticee was provided employment as the executive director of AHL on May 01, 2006. The appointment letter issued by AHL clearly provides that the Noticee was a salaried employee of AHL and worked under the total supervision of AHL including the place of posting of the Noticee was determined AHL. The appointment letter of the Noticee dated May 01, 2006 provides that the place of posting of the Noticee shall be Kolkata, however, the registered office of AHL was New Delhi. This clearly shows that the Noticee was employed as an ordinary employee of AHL and was not appointed to be part of the day-to-day managerial decisions of AHL. Therefore, the Noticee cannot be held responsible for any alleged violation of Companies Act or SEBI Act by AHL.

(v) SEBI has not provided any documentation as to why a company that had a chairman, a managing director, a chief financial officer and a compliance officer would delegate an authority for bringing a public issue to a person who in a facade of director was merely an employee. Mr. Kanwar Deep Singh was the managing director of AHL and therefore, the Noticee cannot be held liable for any alleged violations committed by AHL.

12.6 <u>The Noticee was not present in relevant board meetings and was not involved in issuing prospectus or collecting funds pursuant to board resolutions</u>

(i) AHL was incorporated in 1995 and had received license of Non-Banking Financial Company (NBFC) from the Reserve Bank of India. AHL was subject to regular internal, statutory and regulatory audit including that of RBI. The Noticee had joined AHL in the year 2003 as an ordinary employee and continued to act as one despite his designation. Despite these regular audits no adverse direction, order or remark was made by any regulatory authority or auditor before 2013 which would make the Noticee suspect any wrongdoing. He continued to work in a *bona fide* manner as an employee of AHL. The Noticee had no means to know or reason to believe that the activities of AHL were violative of law. Thus, fastening liabilities of AHL on the Noticee would be perverse in law as well as in facts.

(ii) The Noticee cannot be held liable for alleged violations of AHL unless there are specific allegations providing precise role of the Noticee in such violations. Interim Order and the documents obtained during inspection demonstrate that SEBI has been unable to make out a case for holding the Noticee liable for acts of AHL.

(iii) Reliance has been placed on the following decisions of Hon'ble SAT:

(a) Dr. Uppal Devinder Kumar vs. SEBI (2019 SCC OnLine SAT 202), wherein Hon'ble SAT held that it is not necessary that every director is required to be penalized merely because he is a director on the ground that he was deemed to responsible for the affairs of the company.

(b) Sayanti Sen vs. SEBI (2019 SCC OnLine SAT 132), wherein Hon'ble SAT held that where a company is the offender, vicarious liability of the directors cannot be imputed automatically. It further held that the mere fact that a person is a director would not make him automatically responsible for refund of monies under section 73(2) of the Companies Act. Section 73(2) of the Companies Act makes it clear that if in the first instance it was the company which was liable to repay the monies received from the investors and if the company failed to repay the amount, then the amount would be recovered jointly and severally from every director of the company as an officer in default.

(c) Rustom Cavasjee Cooper vs. UOI (AIR 1970 SC 564)**,** wherein it was that a director is a mere agent of company for its management.

(iv) Reliance has also been placed on decision of Hon'ble Supreme Court in Sunil Bharti Mittal vs. Central Bureau of Investigation (2015 SCC Online SC 18), wherein it was held that a person can be held liable for actions of a company only if he had played an active role in the illegal activity coupled with criminal intent. Further, a person cannot be held vicariously liable for the activities of the company in absence of the statutory provisions to that effect.

(v) Impugned transactions as per the Interim Order stem from the resolutions passed at the board meeting held on February 10, 2006, however, the Noticee was not part of the board of directors of AHL on the said date, as he was appointed as an executive director on May 01, 2006. The prospectus was signed by Mr. Brij Mohan Mahajan, who was the director of AHL.

(vi) Since the Noticee was appointed after February 10, 2006, and was working in a *de facto* position of an employee of AHL, he had no reason to question activities of AHL. In Form 2- Return of allotment for the following dates, either the Noticee is not a signatory or the Noticee has been purportedly shown as signatory:

TABLE 2

Form 2- Return of allotment	Signed by
(i) 25.03.2006; (ii) 04.06.2006; (iii) 14.02.2007; (iv) 31.05.2007; (v) 25.09.2007; (vi) 30.06.2008; (vii) 31.10.2008.	Brij Mohan Mahajan
29.02.2008 and 28.02.2009	Noticee
31.08.2006	Sunil Kanti Kar

(vii) Similarly, following board resolutions approving allotment of shares were not signed by the Noticee:

TABLE 3

Date	Certified true copy of board resolution approving the allotment of shares/RPS
March 25, 2006	46,71,200 shares
June 04, 2006	2,43,25,300 shares
August 31, 2006	3,81,53,400 shares
February 14, 2007	8,34,64,400 RPS
May 31, 2007	4,74,67,500 RPS
September 25, 2007	5,79,47,500 RPS
February 29, 2008	5,01,45,500 RPS
June 30, 2008	4,40,50,400 RPS
February 28, 2009	4,02,44,700 RPS

(viii) Further, on conducting public search on MCA for the same time period, it was observed that documents signed therein were also not signed by the Noticee. Form 23 pertaining to registration of resolution(s) and agreement(s) were signed as given below:

TABLE 4

Particulars	Required to be signed by	Signed by
Registration of resolution dated 04.03.2006 Subject matter of the resolution is increase in preference share capital.	Managing director/director or secretary of a company.	Nitin Madan
Registration of resolution dated 25.03.2006 Subject matter of the resolution is allotment of RPS		Brij Mohan Mahajan
Registration of resolution dated 23.05.2006 Subject matter of the resolution is increase in preference share capital.		Nitin Madan
Registration of resolution dated 10.08.2006 Subject matter of the resolution is increase in preference share capital.		Nitin Madan

(ix) The Noticee has not signed any of the documents or has purportedly been shown as signatory. Hence, from the limited documents available on MCA and those with SEBI which were shared with during inspection, the Noticee cannot be held liable or assumed to be actively participating.

(x) The investigation report as provided by SEBI *vide* its email dated November 25, 2022 makes no mention of involvement of the Noticee in the affairs of AHL or the issuance of RPS. In fact, it merely states that the Noticee, among others, is a director of AHL as evidenced from the 2011-12 annual report.

12.7 <u>SEBI needs to establish foundational facts when authenticity of the signatures is contested</u>

(i) SEBI has not provided any evidence to establish that the purported signatures are in fact that of the Noticee. For the first time on November 25, 2022 (relating to the cause of action dating 16 years back, after almost 10 years from the date of SEBI's Interim Order) SEBI has provided to the Noticee copies of some purported board resolutions, provided by AHL to SEBI alleging the signatures of the Noticee. The Noticee categorically denies having made any such signature much less being privy to any purported violation of Companies Act.

(ii) It is an established principle under the Indian Evidence Act, 1872 that the liability to prove that a person has signed a document lies on the person making such an allegation (section 67 of the Indian Evidence Act, 1872).

(iii) SEBI has neither provided originals of the board resolutions allegedly signed by the Noticee nor it has provided cross-examination of the officials of AHL so as to ascertain authenticity of the documents. Additionally, SEBI has also not provided any statement of the officials of AHL which would establish that the purported signatures were in fact of the Noticee.

(iv) SEBI has not obtained a report of signature expert or forensic expert to ascertain the veracity of the board resolutions themselves as well as the purported signatures therein. Failure of SEBI to ensure the same is in gross violation of established laws of evidence and principles of natural justice and fairness. This also severely prejudices the ability of the Noticee to defend himself due to sheer lapse of time, and especially when he is no more an employee or associated with AHL since 2013.

(v) The only basis of all the allegations against the Noticee stems from the alleged signatures of the Noticee on certain documents. However, mere signatures cannot be conclusive proof of the Noticee having knowledge of / being involved in the decision making in the affairs of the AHL. Reliance is placed on decision of Hon'ble SAT in Inventure Growth and Securities Ltd and Ors. vs. SEBI, decision dated October 10, 2019.

12.8 Cognizance taken by RBI of lack of Noticee's role in AHL

(i) Interim Order fails to specifically mention any provision of the Companies Act/ SEBI Act and corresponding rules and regulations, which the Noticee has violated.

(ii) Reliance is placed on paragraph 4(j) of RBI order dated June 24, 2014 ("**2014 RBI Order**"), wherein certificate of registration of AHL to carry on the business of NBFC was cancelled. Regarding role of the Noticee, RBI in the said order held that the Noticee had no active role in functioning of AHL and he was an employee nominated as a director.

(iii) In view of the above, the Noticee cannot be considered a *de facto* director of AHL, which is an essential condition for holding the Noticee liable for the actions of AHL.

12.9 The Noticee has already been punished for a decade

(i) The Noticee is a senior citizen whose savings are his only source for sustenance in old age. The Noticee's financial assets have been frozen for almost a decade. He had been restricted from accessing any of the financial instruments at an age where he lacks ability to seek any alternate source of living. The Noticee suffers from age-related physical ailments which require constant and costly treatment and due to the freezing of his accounts, the Noticee has been unable to gather adequate resources for his medical treatment.

(ii) The Noticee has already been punished for almost a decade now and any further penalty would be unjust and unreasonable.

C. CONSIDERATION OF ISSUES AND FINDINGS

13. I have considered the Interim Order, replies of the Noticee, and other material available on record. The central issue regarding the liability of AHL by issuing RPS in violation of the provisions of the Companies Act has already been settled through the 2015 Final Order which was upheld by the 2018 SAT Order and the 2019 SC Order. Therefore, the objective of the present proceedings is to determine the liability of the Noticee as a director of AHL for the aforesaid violation by AHL. Accordingly, the following issues emerge for consideration in the present matter:

Issue I: Whether the preliminary contentions of the Noticee are tenable?

I.1 Whether the delay, if any, has vitiated the proceedings?

I.2 Whether all relevant documents were provided to the Noticee in compliance with principles of natural justice?

I.3 Whether documents provided by SEBI *vide* emails dated November 25, 2022 and January 16, 2023 can be relied upon?

Issue II: Whether the Noticee being the erstwhile director of AHL is liable for violation of sections 56, 60, 69 and 73(2) of the Companies Act for all the impugned RPS issuances?

(I) WHETHER THE PRELIMINARY CONTENTIONS OF THE NOTICEE ARE TENABLE?

(I.1) Whether the delay, if any, has vitiated the proceedings?

14. Before going into the merits of the case, I find it appropriate to deal with the preliminary contentions raised by the Noticee. The Noticee's contention regarding delay are twofold – *Firstly,* that majority of allegations sought to be levied by SEBI transpired in the year 2006, *i.e,* 7 years prior to issuance of the Interim Order on September 20, 2013; *Secondly* that the Interim Order was ultimately served on the Noticee on June 30, 2022, *i.e,* 16 years after occurrence of alleged events that are violative of Companies Act, which according to the Noticee has prejudiced his ability to adequately respond to allegations.

15. I note that the instant proceedings are concerned with RPS issued by AHL during the years 2006 to 2009. With respect to what happened after 2009, it is relevant to look at the sequence of events which has led to the present proceedings:

(i) SEBI received a complaint dated June 02, 2010 alleging that AHL was conducting illegal activities by carrying on business of collecting money at high interest rate through unauthorised schemes.

(ii) SEBI sent letters dated September 27, 2010 and October 08, 2010 requesting information from AHL, which were responded to by AHL *vide* letter dated November 30, 2010 along with information requested such as annual reports, annual returns *etc.*

(iii) SEBI sent letters dated December 16, 2010 and January 13, 2011 requesting documents such as board resolutions of AHL since 2006, list of allottees, funds raised pursuant to closure of issue *etc.*

(iv) In response to the aforesaid, AHL submitted certain information *vide* its letter dated January 28, 2011. However, the same was not considered complete and therefore, SEBI requested documents *vide* letter dated April 29, 2013.

(v) AHL responded to the above *vide* letter dated May 13, 2013, and provided certain documents.

(vi) Enforcement action was approved against AHL and its directors on June 14, 2013.

(vii) Interim Order was passed on September 20, 2013.

(viii) 2015 Final Order was passed by WTM on August 14, 2015, wherein *inter alia* directions were passed against AHL and its directors excluding the Noticee as the Interim Order and the hearing notices could not be served on him.

(ix) Against the 2015 Final Order, an appeal was filed before the Hon'ble SAT, which was dismissed by Hon'ble SAT *vide* order dated June 29, 2018 *i.e,* 2018 SAT Order.

(x) Another appeal was filed before the Hon'ble SC against the order passed by the Hon'ble SAT, which was disposed of by Hon'ble SC *vide* the 2019 SC Order passed on November 25, 2019.

(xi) In 2021, directions were passed against 4 other directors of AHL including the Noticee on June 18, 2021.

(xii) Thereafter, an appeal was filed against the aforesaid order before Hon'ble SAT, which remanded the matter to WTM to decide afresh *vide* order dated May 31, 2022.

16. The Noticee has relied upon certain orders of Hon'ble SAT to support his argument that the Interim Order should be quashed on the ground of delay. My findings on each of the orders are as follows. In *Ashlesh Gunvantbhai Shah (supra),* Hon'ble SAT had observed that there was a delay of 7 years in issuance of the SCN as SEBI had noticed the irregularities in August, 2011 and had issued a SCN in November, 2017. In *Sanjay Jethalal Soni (supra),* Hon'ble SAT had observed that SEBI was not justified in waiting for more than five years to issue the second SCN as first SCN was issued in 2012 and thereafter another SCN was issued in 2017. In *Libord Finance (supra)*, Hon'ble SAT had observed that irregularities were committed in the year 1996 and the SCN was

issued by SEBI in the year 2004. In *Rajeev Bhanot (supra)*, Hon'ble SAT had *inter alia* held that there was a lapse of 12 years in initiation of proceedings as the acquisition pertained to the years 2005-2006, and the SCN was issued in 2017. I find that the common thread in the aforesaid cases is that there was delay in initiation of proceedings by SEBI or there was delay by SEBI in taking cognizance of the matter when information existed in public domain. As opposed to the aforesaid cases, in the present case, as stated before, there was no delay in initiation of proceedings as the RPS concerned were issued by AHL in the years 2006 to 2009, the examination began in 2010 and Interim Order was issued in 2013 *inter alia* to the Noticee.

17. In general, examination of a matter to ascertain violations, is a time consuming process that involves collection and careful examination of information obtained from various entities such as the company itself, stock exchanges, depositories, banks *etc.,* and therefore, the time taken in an examination may vary from case to case. I draw reference to the order passed by Hon'ble SAT in Pooja Vinay Jain vs. SEBI (Appeal No. 152 of 2019) decided on March 17, 2020, wherein, *inter alia,* the following was held:

"On the issue of delay, in the case of Ashok Rupani (supra), this Tribunal, inter-alia, noted the ratio in the case of Mr. Rakesh Kathotia and Ors. vs. SEBI [Appeal No 7 of 2016 decided on May 27, 2019]. Paragraph No. 7 of the case of Ashok Rupani Judgment is as under….

The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time. This would depend upon the facts and circumstances of the case, nature of the default / statute and prejudice caused to the noticee.

In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. <u>The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any</u>

<u>*prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*</u>*."*

(emphasis supplied)

18. I note that all relevant and relied upon documents were provided to the Noticee. Infact, all the documents relevant for the determination of liability are publicly accessible on the MCA website. Importantly, proceedings against AHL and its director were subject to appeals before the Hon'ble SAT and the Hon'ble Supreme Court which concluded in 2019. Due to the need to comply with principles of natural justice, including by way of service of the Interim Order correctly, the conclusion of current proceedings consumed some time. I note that after service of the Interim Order, adequate opportunities were granted to the Noticee to represent his case, through written and oral submissions after granting inspection of relevant documents. I therefore find that the Noticee had sufficient material, time and opportunity to defend himself. If the facts bear out clearly that an entity was liable for having violated the law, the proceedings need to be taken to its logical conclusion. This is particularly so when such violations may warrant refunds to investors whose interests were affected due to the said violations. Consequently, the Noticee's contention that delay in initiation of proceedings has vitiated the quasi-judicial proceedings is without merit.

(I.2) Whether all relevant documents were provided to the Noticee in compliance with principles of natural justice?

19. I note that the Hon'ble Supreme Court in the *T.Takano case (supra)*, has *inter alia* stated that noticees have a right to disclosure of material which is relevant to and has a nexus with the proceedings initiated. It further held that the right to disclosure is not absolute, and information which would affect third-party rights and the stability and orderly functioning of the securities market need not be disclosed by SEBI. I note that all the relevant and relied upon documents such as examination report, copies of board resolutions approving RPS, return of allotments, financial statements of AHL, letters of AHL *etc* were provided to the Noticee. Further, inspection of documents was granted to the Noticee. Thereafter, during the hearing, the Noticee raised the issue of not having received certain documents. Considering the reply of the Noticee and his oral submissions, I considered it appropriate to re-examine the request made for

documents. Additional documents were then provided *vide* emails dated November 25, 2022 and January 16, 2023.

20. However, despite providing additional documents and clarifying as to why other documents were not provided, the Noticee in his additional submission has maintained that the documents given in inspections were inadequate and that not providing the same has violated principles of natural justice. Therefore, I find it necessary to list each of the documents sought by the Noticee, examine whether they were provided, and if not provided, to assess whether the request of the Noticee was reasonable and whether not providing the said documents has caused prejudice. My observations are recorded below:

TABLE 5

#	Document requested by the Noticee	Reference of such request	Status of such request according to the Noticee	Observations on the request
1.	Copy of AHL letter dated June 04, 2014 and copies of annexures attached with it.	Interim Order and/or 2021 WTM Order as set aside by 2022 SAT Order.	Not provided by SEBI.	On perusal of the Interim Order, it is noted that it does not mention any letter dated June 04, 2014. The 2021 WTM order mentions a letter dated June 02, 2014. *Vide* email dated November 25, 2022, it was clarified to the Noticee that the 2021 WTM Order makes a reference to a letter dated June 02, 2014 and not to a letter dated June 04, 2014. Accordingly, copies of letter dated June 02, 2014 along with annexures were provided to the Noticee *vide* the same email. An inspection of the said letter was also conducted by the ARs on February 10, 2023. <u>Therefore, the claim made by the Noticee that the document was not provided to him, is incorrect.</u>
2.	Copy of the resolution passed by the board of directors of AHL with regard to issuance of RPS on June 04, 2006, August 31, 2006, February 14, 2007, May 31, 2007, September 25, 2007, February 29, 2008, June 30,	Paragraph 14 of the Interim Order.	Original not shown by SEBI and only copy provided.	A copy of the documents sought at serial no. 2, which were received from AHL during the examination conducted by SEBI, had been provided to the Noticee at the time when inspection was conducted on August 17, 2022. Originals of board resolutions are maintained with respective companies and Form 2 is filed with RoC. Consequently, originals of such documents are not held by SEBI. SEBI cannot be expected to show the original of a document it does not possess. <u>Therefore, the claim that original</u>

#	Document requested by the Noticee	Reference of such request	Status of such request according to the Noticee	Observations on the request
	2008, October 31, 2008, February 28, 2009 and Form 2 filed with the RoC with these resolutions.			document was not shown by SEBI, is without merit.
3.	A copy of the financial stability report of 2010 and circulars of RBI relied upon by SEBI in the proceedings of AHL.	2021 WTM Order as set aside by 2022 SAT Order	Not provided.	As discussed in the 2021 WTM Order, the Financial Stability Report 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"*. As noted previously in this Order, the liability of AHL has already been established in the 2015 Final Order and the purpose of this Order is only to determine the liability of the Noticee, being a director of AHL. The requested document is not relevant for the purpose of adjudging the liability of the Noticee. Further, I find that the said document is a publicly available report of RBI which can be accessed by the Noticee.
4.	Copy of any statement recorded by SEBI with respect to these proceedings.		Not provided.	The Noticee was previously also informed by email dated November 25, 2022, that no statements were recorded in the present matter. The Noticee was also informed *vide* the aforesaid email that there was no order appointing an investigating authority under section 11C of the SEBI Act as no investigation was conducted in the matter. Despite clarifying the above to the Noticee earlier also, he has continued to seek non-existent documents. Therefore, the Noticee's claim that the documents were not provided, is incorrect.
5.	Copy of order of appointing investigating authority.		Not provided.	
6.	Order of the competent authority approving initiation of any enforcement action in respect of Noticee.		Not provided.	The present enforcement proceedings against the Noticee is pursuant to the Interim Order passed by the Whole Time Member, SEBI. The Interim order was served on the Noticee and is publicly accessible on the SEBI website. Therefore, the request at serial no. 6 is without merit.
7.	A copy of all the documents received, communications made by SEBI with any person in respect of the	Interim Order	Not provided.	The requests made at serial nos. 7- 10 are vague. Under the garb of inspection of documents, it is not open to the Noticee to conduct a roving enquiry. All documents which have been relied upon and are relevant for these proceedings against the Noticee have

<table>
<tr><th>#</th><th>Document requested by the Noticee</th><th>Reference of such request</th><th>Status of such request according to the Noticee</th><th>Observations on the request</th></tr>
<tr><td></td><td>present proceedings, not provided along with Interim Order including that with the auditors, custodian or other employees and directors of AHL, if any.</td><td></td><td></td><td rowspan="4">already been provided. I note that during the course of the present proceedings, the following documents were inspected by Noticee and provided to him on August 17, 2022 and email dated September 02, 2022:
(i) Copy of complaint against AHL dated June 02, 2010.
(ii) Copies of SEBI letter dated September 27, 2010, October 08, 2010, December 16, 2010, January 13, 2011, and April 29, 2013.
(iii) Copies of AHL letter dated October 29, 2010, *November 30, 2010, **January 28, 2011, May 13, 2013 and September 03, 2013.

(*the AHL letter dated November 30, 2010 inter alia contained the following annexures: (a) financial statements of AHL for FY ending 2007, 2008, 2009 and 2010; (b) annual returns filed pursuant to AGM held on September 29, 2007, September 30, 2008 and September 30, 2009; and(c) Form 2 filed for the following date of allotments: March 25, 2006, June 04, 2006.

**the AHL letter dated January 28, 2011 inter alia contained the following Form 2-Return of allotments: March 25, 2006, June 04, 2006, August 31, 2006, February 14, 2007, May 31, 2007, September 25, 2007, February 29, 2008, June 30, 2008, October 31, 2008, February 28, 2009).

(iv) Copy of annual report and annual returns filed by AHL for FY 2012 -2013.
(v) Copy of MCA data with respect to appointment and resignation of Noticee.
(vi) Copy of application form circulated by AHL.
(vii) Copy of auditors’ report for FY ending 2007-2010.
(viii) Copy of the resolution passed by the board of directors of AHL with regard to issuance of RPS on</td></tr>
<tr><td>8.</td><td>Any adverse material available on record or any document filed by any other noticee evidencing the signatures or presence of Noticee in relation to the allegations in the Interim Order.</td><td></td><td>Not provided.</td></tr>
<tr><td>9.</td><td>Any document or statement evidencing any financial transaction with Noticee.</td><td></td><td>Not provided.</td></tr>
<tr><td>10.</td><td>Copy of all other documents that are in SEBI's possession in relation to the present proceedings including external communications, file notings insofar as it relates to Noticee from 2013 till date.</td><td>Interim Order</td><td>Not provided.</td></tr>
</table>

#	Document requested by the Noticee	Reference of such request	Status of such request according to the Noticee	Observations on the request
				February 10, 2006, June 04, 2006, August 31, 2006, February 14, 2007, May 31, 2007, September 25, 2007, February 29, 2008, June 30, 2008, October 31, 2008, February 28, 2009. Further, the following documents were provided to Noticee by emails dated November 25, 2022 and January 16, 2023 after the aforesaid inspection: (i) Copy of AHL dated June 02, 2014 and copies of annexures attached with it. (ii) Copy of examination report. (iii) Form 32 along with copy of board resolution dated April 01, 2006. (iv) Form 32 regarding cessation of directorship of Noticee. (v) Copy of notice regarding extra ordinary general meeting ("**EGM**") to be held on May 30, 2006 for appointment of the Noticee. (vi) Certified true copy of special resolution passed in EGM held on May 30, 2006 for appointment of the Noticee. (vii) Certified true copy of special resolution passed in EGM of AHL held on January 24, 2007 and March 27, 2009 for allotment of RPS signed by the Noticee***. (viii) Copy of notice regarding EGM to be held on April 11, 2011 for reappointment of the Noticee as a whole time director. <u>In view of the above, I find the request of the Noticee at serial nos. 7-10, to be without merit.</u>

**** Sent vide email dated November 30, 2022 as the same was mentioned, however, it was inadvertently not attached in email dated November 25, 2022.*

21. As can be seen from the aforesaid table, there is not a single identifiable document sought by the Noticee which is relevant to this case but has not been provided to him. Therefore, I do not find merit in the bald assertion made by the Noticee that principles of natural justice have been violated by not providing him inspection of documents.

22. I note that the Noticee has placed reliance on the decision of *Price Waterhouse (supra)* to submit that all documents collected during investigation are required to be permitted for inspection. The Noticee has also placed reliance on the decision of *Mayrose Capfin Private Ltd. (supra)*. I find that in the aforesaid order, Hon'ble SAT had held that the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. I note that the law governing supply of documents to noticee has now been laid down by the Hon'ble Supreme Court in its decision in *T. Takano (supra)*. As elaborated earlier, all relevant documents, in line with the decision of *T.Takano (supra),* have been provided to the Noticee. Therefore, I find that the Noticee was provided documents and granted inspection of documents in due compliance with principles of natural justice.

(I.3) Whether documents provided by SEBI *vide* emails dated November 25, 2022 and January 16, 2023 can be relied upon?

23. SEBI has provided documents to the Noticee *vide* emails dated September 02, 2022, November 25, 2022 and January 16, 2023. The documents provided by email dated September 02, 2022 formed part of the first inspection conducted on August 17, 2022. Subsequent to the opportunity of inspection granted, I took note of certain additional documents which in my view were relevant for the purpose of these proceedings. *Vide* emails dated November 25, 2022 and January 16, 2023, the Noticee was provided the following additional documents:

(i) Copy of AHL letter dated June 02, 2014 and copies of annexures attached with it.

(ii) Copy of examination report.

(iii) Form 32 along with copy of board resolution dated April 01, 2006.

(iv) Form 32 regarding cessation of directorship of Noticee.

(v) Copy of notice regarding EGM to be held on May 30, 2006 for appointment of the Noticee.

(vi) Certified true copy of special resolution passed in EGM held on May 30, 2006 for appointment of the Noticee.

(vii) Certified true copy of special resolution passed in EGM of AHL held on January 24, 2007 and March 27, 2009 for allotment of RPS signed by Noticee.

(viii) Copy of notice regarding EGM to be held on April 11, 2011 for reappointment of the Noticee as a whole time director.

24. As stated above, the copies of the aforesaid documents were provided to the Noticee *vide* emails and their replies were sought, pursuant to which written submissions dated January 24, 2023 were received and an additional opportunity of personal hearing was granted on February 08, 2023. Further, the request of the Noticee to inspect the originals of the aforementioned documents available with SEBI was acceded to and inspection was granted on February 10, 2023. It may be noted that except for documents at (i) and (ii) above, all the other documents listed in paragraph 23 above are documents whose originals are not available with SEBI since the said documents were filed by AHL with RoC. They were provided by SEBI upon detailed examination of the documents available on the MCA website.

25. The Noticee has argued that the aforesaid documents:
(a) cannot be relied upon in the absence of proof of contents of documents by forensic expert or pursuant to cross examination of the author of these documents;
(b) cannot be relied upon as they do not form part of the investigation or the SCN; and,
(c) cannot be relied upon as they are contrary to paragraphs 7.2 and 8.9 of the affidavit in reply filed by SEBI before the Hon’ble SAT.

26. I note that from the additional documents provided by SEBI, all documents, except the examination report and the AHL letter dated June 02, 2014, are available in public domain (*i.e.,* on the publicly accessible MCA website). Infact, *vide* submissions dated September 19, 2022, the Noticee had referred to certain documents filed and available on the MCA website which according to him supported his contention that the Noticee could not be held liable or be assumed to have actively participated in AHL’s affairs. After considering these submissions, I deemed it appropriate to peruse other documents available on the MCA website in connection with AHL for better appreciation of the liability of the Noticee. In other words, while the Noticee offered some documents from the MCA website for my consideration, I have also examined other documents available on the very same MCA website, for a holistic view of the

matter. In the Noticee's submissions dated September 19, 2022, he has extensively relied on certain documents available on the MCA website to demonstrate that he was not an officer in default. If the Noticee finds that the uncertified documents available on MCA website are to be considered reliable enough to prove his case, he cannot now question the reliability of other documents available on MCA website that are not in his favour. Seeking cross-examination of the author of the documents uploaded by AHL on the MCA website and questioning the veracity of the documents exposes a double standard on the Noticee's part. The veracity of the documents available on the MCA website cannot depend on whether or not a specific document supports the Noticee's claims. The documents at serial nos. (iii) to (viii) listed in paragraph 23 above which are available on the MCA website pertain to different time periods and they are in the context of different activities of AHL. The Noticee has not provided adequate evidence to suggest that all of these different documents were doctored or not representative of the true state of affairs of AHL. Unsubstantiated assertions are not sufficient to raise doubts that would warrant forensic analysis or cross-examination as demanded by the Noticee. Therefore, I do not agree with the contention that the aforesaid documents cannot be relied upon in the absence of "*proof of contents of documents by forensic/expert evidence"* or "*opportunity to cross-examine the author"* of the aforementioned documents.

27. I also note that the additional documents provided to the Noticee, as discussed above, do not alter the charge made out in the Interim Order cum SCN. Rather, considering the relevance of these documents to the allegations made in the Interim Order cum SCN, the same were provided to the Noticee in the interest of compliance with principles of natural justice. The documents were sent to the Noticee and replies were sought on the same – both written and oral. Failure to take cognisance of these documents *(which include important filings made by AHL in relation to various events that took place between the years 2006 and 2011)* would considerably prejudice the factual determination of the Noticee's statutory liability under the Companies Act, thereby adversely affecting investors' interest. Having given several opportunities to the Noticee to rebut the inferences drawn from these documents, it cannot be said that prejudice has been caused to the Noticees by not referring to those documents in the Interim Order cum SCN or by not providing certified copies. Therefore, I do not find

any merit in the Noticee's contention that the aforesaid documents cannot be relied upon as they do not form part of investigation.

28. The Noticee has also contended that the aforesaid documents (specifically in the context of the date of Noticee's appointment as director) are contrary to the affidavit in reply filed by SEBI. The issue regarding the date of the Noticee's appointment and his tenure is discussed in more detail in paragraphs 37 to 43 of this Order. As to the affidavit in reply, in the verification part of the said reply, the deponent has stated that the *"contents of paragraph nos. 3 to 7.13 and 9 are on the basis of record made available to me and the contents of paragraph nos. 8.1 to 8.17 are based on legal advice. I have not supressed any material facts"*. I note that the said affidavit in reply was filed by SEBI in response to the appeal filed by the Noticee against 2021 WTM Order before the Hon'ble SAT. The same appears to have been based on the facts/materials then available on record including the facts recorded in 2021 WTM Order. Subsequently, the matter was remanded to SEBI to decide the matter afresh. As noted earlier, the aforesaid documents were obtained as a result of detailed perusal of records available on the MCA website which is publicly accessible. The affidavit in reply referred to by the Noticee was based on whatever material was earlier on record. The statement in the affidavit and the material relied on to state the same are not factually incorrect. It is merely SEBI's case, that the documents which have come to light after detailed perusal of the MCA website offer a different date of appointment of the Noticee as a director. Therefore, I find no merit in the Noticee's contention that the aforesaid documents cannot be relied upon since they contradict paragraphs 7.2 and 8.9 of the affidavit filed by SEBI.

(II) WHETHER THE NOTICEE BEING THE ERSTWHILE DIRECTOR OF AHL CAN BE HELD LIABLE FOR VIOLATION OF SECTIONS 56, 60, 69 AND 73(2) OF COMPANIES ACT FOR ALL OF THE IMPUGNED RPS ISSUANCES?

29. As observed earlier in this Order, the liability of AHL by issuing RPS in violation of the provisions of the Companies Act has already been settled through the 2015 Final Order which was upheld by the 2018 SAT Order and the 2019 SC Order. Therefore, the central issue to be dealt with in this Order is the liability of the Noticee, for the violations committed by AHL. While the Noticee has admitted that he was a director of

AHL, his primary contention is that he was <u>not</u> '*de facto'* a director and not an 'officer in default', and consequently, in any manner, he was not responsible for the issuances of RPS made by the AHL.

30. For ease in reference, the relevant extracts of the aforesaid provisions of the Companies Act are reproduced below:

56. MATTERS TO BE STATED AND REPORTS TO BE SET OUT IN PROSPECTUS
(4) A director or other person responsible for the prospectus shall not incur any liability by reason of any noncompliance with, or contravention of, any of the requirements of this section, if –
(a) as regards any matter not disclosed, he proves that he had no knowledge thereof ; or
(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part ; or
(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case, were immaterial, or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:
Provided that no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the matters specified in clause 18 of Schedule II, unless it is proved that he had knowledge of the matters not disclosed.

60. REGISTRATION OF PROSPECTUS
(5) If a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which may extend to fifty thousand rupees.

69. PROHIBITION OF ALLOTMENT UNLESS MINIMUM SUBSCRIPTION RECEIVED

(5) If the conditions aforesaid have not been complied with on the expiry of one hundred and twenty days after the first issue of the prospectus, all moneys received from applicants for shares shall be forthwith repaid to them without interest ; and if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors of the company shall be jointly and severally liable to repay that money with interest at the rate of six per cent per annum from the expiry of the one hundred and thirtieth day :

Provided that a director shall not be so liable if he proves that the default in the repayment of the money was not due to any misconduct or negligence on his part.

73. ALLOTMENT OF SHARES AND DEBENTURES TO BE DEALT IN ON STOCK EXCHANGE

(2) Where the permission has not been applied under sub-section (1), or, such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, 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, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

"***OFFICER IN DEFAULT"***

31. Liability of directors of companies which have made public issue of securities in violation of the mandate of section 67(3) of the Companies Act (*which specifies conditions for an offer to be qualified as a private placement*) and without complying with section 73(1) of the Companies Act (*which states that every company offering shares to public is required to apply to stock exchange for listing*), have been the subject of several decisions of the Hon'ble SAT. These decisions and the important observations/directions therein are reproduced below:

31.1 **Manoj Agarwal vs. SEBI (Appeal no. 66 of 2016)**, decision dated July 14, 2017:

"Argument of the appellant that he could not be said to be an "officer in default" is without any merit. 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. Therefore, decision of the WTM that all directors of BREDL including the appellant would constitute "officer in default" cannot be defaulted."

31.2 **Pritha Bag vs. SEBI (Appeal no. 291 of 2017)**, decision dated February 14, 2019:

"12…….Unless and until a finding is given that the appellant is an officer in default, the mandate provided under Section 73(2) cannot be invoked against the appellant. In the instant case, the appellant has annexed documents to indicate that the company had a managing director, namely, Mr. Indranath Daw and, therefore, as per the provisions of Section 5 the managing director would be an officer in default. We also find that there is no finding given by the WTM that the appellant was the managing director or whole time director or was a person charged by the Board with the responsibility of compliance with the provisions of the Companies Act and, consequently, could not be made responsible for refunding the amount under Section 73(2).

13.Reliance on the judgment of this Court by the respondent in the case of Manoj Agarwal vs. SEBI in Appeal No. 66 of 2016 decided on July 14, 2017 is not applicable and is distinguishable. The Tribunal in the case of Manoj Agarwal found that there was no material to show that any of the officers set out in clauses (a) to (c) of Section 5 or any specified director of the said company was entrusted to discharge the application contained in Section 73 of the Companies Act. In the instant case, there is sufficient material on record to show that there was a managing director and in the absence of any finding that the appellant was entrusted to discharge the application contained in Section 73 of the Companies Act, the direction to refund the amount alongwith interest from the appellant is wholly illegal."

31.3 **Sayanti Sen vs. SEBI (Appeal no. 163 of 2018)**, decision dated August 09, 2019:

"13. As per Section 5 of the Companies Act it becomes clear that a managing director, whole time director, manager, secretary and any person who has been authorized by the board or by any director are now officers in default. Section 5(g) of the Companies Act makes it apparently clear that if there is a managing director appointed in a company, he would be an officer in default. Further, in the absence of any managing director, if the board has specified any particular director or manager or any other person as an officer in default in which case only that specified director or manager etc. as the case may be would be an officer in default.

14. Section 5(g) of the Companies Act further provides that apart from the directors any officer can also be penalized if his role can be attributed to be an officer in default. If any officer has played some role in bringing about the default or he might have performed the duties assigned to him then he could be penalized as an officer in default. Section 5(g) of the Companies Act thus makes it clear that in the absence of any managing director or any specific order of a board, then by a deeming fiction, all the directors of the company would be officers in default.

…

26.....Section 73(2) of the Companies Act makes it apparently clear that if in the first instance it was the Company which was liable to repay the monies received from the investors and if the Company failed to repay the amount then the amount would be recovered jointly and severally from every Director of the Company as an officer in default. Therefore, where the Company is the offender vicarious liability of the Directors cannot be imputed automatically.

27. Thus, the WTM was required to arrive at a specific finding that a Director or Directors were responsible for the acts of the Company. The mere fact that a person is a Director would not make him automatically responsible for refund of monies under Section 73(2) of the Companies Act.

28. In the light of the aforesaid, we find that the WTM has given a categorical finding that Shri Shib Narayan Das was responsible for the affairs of the Company. It was not open for the WTM to pass further orders on the other Directors, namely, the appellant especially when there is no finding nor there is a shred of any evidence to indicate that the appellant was also responsible for the affairs of the Company."

32. The following points emerge from the aforesaid decisions of the Hon'ble SAT:

(i) In order to find a person to be jointly and severally liable to refund monies collected, in accordance with section 73(2) of the Companies Act, he/she must not only have been a director of the company during the relevant period when the impugned public issue had taken place, but also he/she must have been an "officer in default", as defined in section 5 of the Companies Act.

(ii) In accordance with the provisions of section 5, it needs to be first ascertained as to whether the issuer company had a managing director. If there is a managing director in the company, then he would be an "officer in default".

(iii) In the absence of any managing director, if the board has specified any particular director or manager or any other person as an "officer in default", only that specified director, manager *etc*., as the case may be, would be an officer in default.

(iv) Apart from the directors, if any officer has played some role in bringing about the default or he might have performed the duties assigned to him then he could be penalized as an "officer in default".

(v) In the absence of all of the above, by deeming fiction, all directors of the company would be regarded as "officers in default".

Material available on record with respect to the Noticee

33. The Interim Order and 2015 Final Order had *inter alia* recorded the following:

33.1 AHL had made an offer of RPS during the years 2006 to 2009 as shown below:

TABLE 6

Sr. No.	Date of issue/allotment of the preference shares	No. of shares of face value Rs. 10/- each approved for allotment	Amount raised (Rs.)
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

Sr. No.	Date of issue/allotment of the preference shares	No. of shares of face value Rs. 10/- each approved for allotment	Amount raised (Rs.)
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**

**5,42,02,900 RPS were allotted on 31.10.2008 as noted from Form 2 filed by AHL with RoC. From the said Form 2, it has been noted that the date of passing of the special resolution authorising the issue of RPS is 25.02.2008. However, AHL has not provided a copy of the said resolution approving the allotment of 5,42,02,900 RPS.*

33.2 The list of directors of AHL and their tenure were as follows:

TABLE 7

#	Name of director	Date of appointment	Date of resignation
1.	Mr. Balvir Singh	02/11/2005	15/10/2013
2.	Mr. Brij Mohan Mahajan	06/12/2004	20/03/2009
3.	Ms. Ashima Sood	22/12/1995	01/04/2006
4.	Mr. Sukrit Sood	31/08/2004	01/04/2006
5.	Mr. Vikramaditya Singh	08/03/2008	
6.	Mr. Sunil Kanti Kar	19/11/2004	08/03/2008
7.	Mr. Chandra Shekhar Chauhan	19/02/2009	
8.	Mr. Narayan Madhav Kumar	20/01/2009	19/02/2009
9.	Mr. Krishna Kumar Singh	Directors at the time of passing 2015 AHL Order.	
10.	Mr. Rajiv Kumar Nayar		

34. The documents available on record pursuant to the examination conducted by SEBI, as well as records on MCA website were perused to ascertain categorisation of the directors by AHL in accordance with section 5 of the Companies Act. My observations based on the said documents and my findings in the context of the Noticee's submissions/replies are as follows:

34.1 ***Managing director in AHL***

The available records do not suggest that any specific director had been designated as a 'managing director' of AHL during the relevant period in time (*i.e. when the impugned RPS issue took place*). Even though the Noticee has contended that Mr. Kanwar Deep Singh was the managing director of AHL during his tenure, he has not been able to provide any official document/record to substantiate his claim except his (i) appointment letter dated October 27, 2003; (ii) promotion letter dated August 21, 2004; and (iii) increment letter dated April 01, 2005, wherein one Kanwar Deep Singh has signed as a managing director. It is evident that all the aforesaid communications were signed by Kanwar Deep Singh before the Noticee began his tenure as director with AHL *(details regarding the Noticee's tenure as director is discussed later in this Order)*. The material available on record also does not suggest that there was any managing director of AHL during the tenure of the Noticee as director in AHL.

34.2 ***Officials specified as "Officer in Default"***

The material available on record do not indicate that any official or director of AHL was specified by the company as an "officer in default". The Noticee's replies/submissions also do not state whether any person was identified as an 'officer in default'.

34.3 ***Whole time director/executive director in AHL***

34.3.1 I note that the 2015 Final Order records that the Noticee was appointed as a director on November 02, 2005 and resigned on October 15, 2013. Certified copy of the resolution passed by board of AHL in its meeting held on April 01, 2006 available on record *inter alia* states that the Noticee is appointed as an '*Executive Director'* of AHL with effect from April 01, 2006 for 5 years, upto March 31, 2011 *(copy was provided to the Noticee vide email sent on November 25, 2022)*. I note from a copy of Form 32 *(Particulars of appointment of managing director, directors, manager and secretary and the changes among them)* available on record that there was a change in designation of the Noticee on April 01, 2006, and the designation of the Noticee is listed as *'Whole-time Director'* and under the category of - "*Whether chairman, executive director, non-executive director*", the words "*Executive director*" are written *(copy was provided to the Noticee vide email sent on November 25, 2022)*.

34.3.2 In the capacity of a director/whole time director/executive director, the Noticee has been involved in signing the following important documents for AHL:

TABLE 8

#	Name of the document signed by Noticee	Particulars of document	Capacity in which document was signed/filed
1.	Form 2 (Return of Allotment) *(copy provided to the Noticee at the time of inspection held on August 17, 2022)*	For RPS allotted on **February 29, 2008** (5,01,45,500 shares amounting to Rs 50,14,55,000).	Director
		For RPS allotted on **February 28, 2009** (4,02,44,700 shares amounting to Rs 40,24,47,000).	
2.	Balance sheet of AHL including "Notes to Accounts" *(copy provided to the Noticee at the time of inspection held on August 17, 2022)*	As on **March 31, 2007** The balance sheet under "Shareholders' funds" refers to Schedule A. From "Schedule A: Share Capital", it is evident that issued, subscribed and paid-up preference shares of AHL increased from Rs 46,712 as on March 31, 2006 to Rs 1,496,143 as on March 31, 2007. Further, "Notes to Accounts", under "other notes", states that AHL has issued 14,96,14,300 preference shares amounting to Rs 149.61 crores.	Director
		As on **March 31, 2008** The balance sheet under "Shareholders' funds" refers to Schedule A. From "Schedule A: Share Capital", it is evident that issued, subscribed and paid-up preference shares of AHL increased from Rs 1,49,61,43,000 as at March 31, 2007 to Rs 3,06,17,48,000 as at March 31, 2008. Further, "Notes to Accounts", under "preference shares", states that AHL has issued 30,61,74,800 preference shares amounting to Rs 306.17 crores.	
		As on **March 31, 2009** The said balance sheet under "Shareholders' funds" refers to Schedule A. From "Schedule A: Share Capital", it is evident that issued, subscribed and paid-up preference shares of AHL increased from Rs 3,06,17,48,000 as on March 31, 2008 to Rs 4,44,67,28,000 as on March 31, 2009. Further, "Notes to Accounts", under "preference shares", states that AHL has issued 44,46,72,800 RPS amounting to Rs 444.67 crores.	
3.	Annual returns of AHL *(copy provided to the Noticee at the time of inspection held on August 17, 2022)*	Pursuant to AGMs held on **September 29, 2007** and **September 30, 2008** Further, the Annual Returns state that as on the date of the AGMs, the Noticee was holding 50 shares of AHL.	Director
		Pursuant to AGM held on **September 30, 2009** Under "Details of shares/debentures transfers since date of last AGM" in the Annual Return, it is stated that 100 equity shares were transferred from Brij Mohan Mahajan to the Noticee and the date of registration of transfer of shares is March 15, 2009	

#	Name of the document signed by Noticee	Particulars of document	Capacity in which document was signed/filed
		and that on the aforesaid date, 2,51,500 equity shares were also transferred from Toubro Holdings Ltd. to the Noticee.	
4.	Notice issued and shareholder resolution passed in relation to EGM held on January 24, 2007. *(copy provided to the Noticee as part of email sent on November 25, 2022)*	The notice dated December 22, 2006 and shareholder resolution passed in the EGM held on January 24, 2007 pertains to issuance of 1.5 crores RPS of Rs 10 each by AHL.	Director.

34.3.3 I note that certified copy of resolution passed by board of AHL in its meeting held on April 01, 2006 *(copy was provided to the Noticee vide email sent on November 25, 2022) inter alia* reads as:

"RESOLVED FURTHER THAT where in any financial year during the currency of the tenure of Mr.Balvir Singh, as Executive Director, the Company has no profit or its profits are inadequate<u>, the remuneration by way of salary as above shall be payable to him as the minimum remuneration as specified in schedule XIII of the Companies Act, 1956 as amended from to time</u>.

(emphasis supplied)

34.3.4 The fact that the board resolution appointing the Noticee goes into the question of no profit or inadequate profit in terms of 'Schedule XIII of the Companies Act', shows that the Noticee was employed either as a managing director or whole time director or manager. This inference is drawn from the fact that Schedule XIII deals with - "Conditions to be fulfilled for <u>the appointment of a Managing or Whole-Time Director</u> <u>or a Manager</u> without the approval of the Central Government" (*emphasis supplied*). The fact that the noticee was a director in AHL has been admitted by the Noticee. Therefore, the reference, in the board resolution appointing him, to his remuneration being governed by Schedule XIII supports the conclusion that he had been appointed as an executive or whole time director in AHL.

34.3.5 In view of the aforesaid documents signed by the Noticee in addition to the Form 32 filed in connection with his appointment, I find that the Noticee was appointed as an executive director/whole time director of AHL.

35. Certain other facts that are brought out from documents available on the MCA website and from documents forming part of the Noticee's reply, draw me to the conclusion that the Noticee was significantly involved in AHL's affairs. These are discussed below:

35.1. ***Shareholder of AHL***

I have perused the annual return of AHL pursuant to AGM held on September 30, 2009 which was signed by the Noticee *(copy was provided to the Noticee along with AHL letter dated November 30, 2010 at the time of inspection held on August 17, 2022).* Under the section *"Details of shares/ debentures transfers since date of last AGM"* in the annual return, it is stated that 100 equity shares were transferred from one, Brij Mohan Mahajan to the Noticee and the date of registration of shares is March 15, 2009. It further states that on the aforesaid date, 2,51,500 equity shares were transferred from Toubro Holdings Ltd. to the Noticee which amounted to 10.06% of the total equity shareholding of AHL *(The said shareholding decreased to 8.50% as per the annual return filed by AHL pursuant to AGM held on September 28, 2011. A copy of the aforesaid annual return was provided to the Noticee at the time of inspection held on August 17, 2022)*. It is important to note that Brij Mohan Mahajan was another director of AHL as seen from Table 7 above and Toubro Holdings Ltd. was the previous name of Alchemist Capital Ltd. ("**ACL**") (*as per order passed by WTM in the matter of M/s Alchemist Capital Ltd. dated August 03, 2015*). Acquisition of significant number of shares by the Noticee, albeit in March 2009 (*which was after the impugned period of RPS issue*), and especially from none other than a fellow director in AHL and from ACL indicates that the Noticee had significant interest in the affairs of AHL and probably wielded much control over its affairs. Notably, the annual returns and the examination report, which were provided to the Noticee and inspected by him, both explicitly state his shareholding in AHL. The Noticee has not contested his shareholding in AHL in any of his replies, which goes to show that the Noticee has nothing in his defence to offer for the 10.06% shares held by him in AHL as per the annual return filed pursuant to the AGM held on September 30, 2009 and the 8.50% shares held by him in AHL as per the annual return filed pursuant to the AGM held on September 28, 2011.

35.2. ***Senior official in AHL prior to directorship***

Having examined the documents submitted by the Noticee along with his reply, I observe that the Noticee had functioned as a senior official of AHL, prior to him being appointed as an executive/whole time director. The documents submitted by the Noticee reveal that he was in a managerial role prior to being appointed as a director. From the annexures submitted by the Noticee in his first reply, I note that he was appointed on September 12, 2003 in AHL. *Vide* letter dated October 27, 2003, the Noticee was appointed as Senior Regional Manager, Kolkata. Thereafter, letter dated November 20, 2003 records that Sri Basab Das Gupta, Vice President of AHL has resigned, and therefore, the Noticee being the Senior Regional Manager has taken over from him till further arrangements were made. *Vide* letter dated August 21, 2004, the Noticee was promoted as Deputy General Manager. I note from the letter dated April 01, 2005 (*regarding increment of Noticee*), that he was addressed as Deputy General Manager. I find it highly probable that his deep involvement in the affairs of AHL as senior functionary would have continued even after his appointment as a director of AHL. Considering his earlier responsibilities and functions performed, I also find no reason to believe that the Noticee was unaware of the responsibilities of a director of the company or that the Noticee could have been misguided towards committing violations of the Companies Act.

36. **CONTENTIONS OF THE NOTICEE**

36.1. ***Board resolutions approving allotment of RPS and forms signed by other persons***

36.1.1. The Noticee has pointed out that board resolutions approving the allotment of RPS and certain forms pertaining to registration of resolutions and agreements (Form 23) which were filed with MCA were not signed by the Noticee *(Refer paragraph 12.6 above)*. This, according to the Noticee, supports his contention that he cannot be held liable or be assumed to have actively participated in AHL.

36.1.2. I have perused the board resolutions and forms referred to by the Noticee. Not all of these resolutions/ forms carry the name of the person who has signed the resolution. The resolutions/ forms pointed out by the Noticee appear to have been signed by different persons, all of whom find mention in the list of directors as brought out in Table 7 above. As noted in Table 8 of this Order, there are several other financial statements/resolutions/ forms/ returns of AHL which are seen to have been signed by the Noticee. Therefore, I find that the documents referred to by the Noticee (*i.e.,* board resolutions approving the allotment of RPS and Form 23 which do not carry the signature or name of the Noticee), do not adequately justify his claim that he was not actively participating in the affairs of AHL. At best, the documents referred to by the Noticee point to the conclusion that other directors of AHL also actively participated in its affairs. Since this Order is specific to the liability of the Noticee, I am not required to arrive at any conclusion with respect to the liability of other directors of AHL. Therefore, I do not find merit in the Noticee's argument seeking his exclusion from liability as an "officer in default" on the strength of the aforementioned board resolutions/forms.

36.2. ***Employee of AHL - Receipt of salary***

36.2.1. The Noticee has stressed multiple times in his replies that he was drawing a salary in the position of a director and therefore, he was actually an employee of AHL. I find that being a recipient of salary does not necessarily make one an employee instead of a director. In this regard, I draw reference to section 309 of the Companies Act, extract of which is reproduced below:

309. REMUNERATION OF DIRECTORS

(3) <u>A director who is either in the whole-time employment of the company or a managing director may be paid remuneration</u> <u>either by way of a monthly payment or at a specified percentage</u> of the net profits of the company or partly by one way and partly by the other : Provided that except

with the approval of the Central Government such remuneration shall not exceed five per cent of the net profits for one such director, and if there is more than one such director, ten per cent for all of them together.

(emphasis supplied)

36.2.2. From the above, I find that a director such as the Noticee may be compensated either monthly or as a percentage of net profits or partly by either of the two. Thus, this contention of the Noticee does not hold merit. Further, Part I of Schedule XIII (Remuneration payable by companies having profits) of the Companies Act states that:

"Subject to the provisions of sections 198 and 309, <u>a company having profits in a financial year may pay any remuneration, by way of salary</u>, dearness allowance, perquisites, commission and other allowances, which shall not exceed five per cent of its net profits for one such managerial person, and if there is more than one such managerial person, ten per cent for all of them together."

(emphasis supplied)

Therefore, I find that payment of salary to a director does not lead to the necessary inference that the director was actually an employee. Infact, the Noticee holding 8.50% shares in AHL in FY 2011-2012 may point to a possibility that he received the said shares as compensation for his board membership and to align his interests with the long term success of AHL.

36.3. ***Functioning from another region***

As regards the contention that the Noticee was posted in another region than the registered office of AHL, I find that the said contention, even if true, does not show that the Noticee was not involved in day-to-day activities of AHL. It is not necessary for a director to function out of the registered office of a company alone. The place of his office does not conclusively determine the status of his directorship or the role he played in the affairs of the company.

36.4. ***Validity of signature***

36.4.1. The Noticee has contested that SEBI has not provided any evidence to establish that the signatures of the Noticee being relied upon were actually signatures of the Noticee. The Noticee denies signing such documents. He has further contended that in terms of section 67 of Indian Evidence Act, 1872, the onus is on SEBI to prove that the Noticee had signed the documents as SEBI has made allegations against the Noticee. He has also argued that in absence of original board resolutions, not providing cross-examination of statements of officials of AHL, and in the absence of report by signature expert or forensic expert, the Noticee has been unable to ascertain the veracity of documents allegedly signed by the Noticee. The aforesaid has according to him severely prejudiced the Noticee and amounts to violation of principles of natural justice.

36.4.2. I find that SEBI has sufficiently discharged its burden of proof by furnishing multiple documents which bear the signature of the Noticee. The documents that SEBI considered to be relevant have all been either sourced from the MCA website which are publicly accessible or from the documents submitted by AHL at the time of examination. The fact that there are multiple documents bearing his sign, all signed at various dates makes it unlikely that all of them were forged or signed under duress. As observed earlier, the Noticee was a senior functionary of AHL prior to being appointed as a director in 2006 and had also become a significant shareholder of AHL in as per the annual return filed by AHL pursuant to AGM dated September 30, 2009. A copy of the aforesaid annual return was provided to the Noticee alongwith AHL letter dated November 30, 2010 at the time of inspection held on August 17, 2022. These circumstances further support the improbability of the Noticee being hoodwinked by AHL, for signing documents. I note that the Noticee has not furnished any proof to corroborate his claim that he had not signed the documents listed above. The Noticee has not claimed that he was coerced to sign. The Noticee has not cited names of who would have purportedly signed documents in the name of the Noticee and what benefit would have been accrued to such entity by signing. Aside from making a vague assertion, the Noticee has not been able to corroborate the claim that he did not append his signatures to the aforesaid multiple documents. The Noticee has not furnished any evidence which would make me suspicious that the said documents were not actually signed by him.

36.4.3. I cannot help but observe that the Noticee attributes accuracy to documents as per his convenience. For example, in his reply dated September 19, 2022, he has relied upon Form 2 (Return of allotment), board resolutions approving RPS, and Form 23 (Registration of resolution) not signed by him to state that the Noticee has not signed any of the aforesaid documents and that hence he was not actively participating in the affairs of AHL. In the same breath, the Noticee claims that the various documents signed by him, as provided in Table 8 above such as Form 2, Balance Sheet and Annual Returns, are documents wherein he has been "purportedly" shown as signatory, and that therefore, he was not actively participating in AHL. In essence, the submission of the Noticee is that the documents which do not show his signature are correct and should be relied upon, but documents which show his signature are incorrect and cannot be relied upon without putting them through a signature verification or cross-examination process. This is an incongruous and opportunistic argument and is without merit.

36.4.4. The Noticee's reliance on the decision of *Inventure Growth (supra)* is misplaced. The Hon'ble SAT in the aforesaid case had *inter alia* stated that since the appellant company had whole time directors, managing directors *etc,* the independent director, who was also an appellant, cannot be held liable for non-disclosure in prospectus. Further, Hon'ble SAT had reduced the period of restraint on appellants who were whole time directors and managing directors as one out of three charges against the appellant company were not sustained. I find that the instant case is distinguishable from the *Inventure Growth (supra)* case. In the present case, the Noticee was an executive director/ whole time director of AHL at the time RPS were issued. The liability of executive/ whole time directors cannot be equated with independent directors who may not be involved in day-to-day affairs of a company.

36.5. ***Not a 'de facto' director***

36.5.1. The Noticee has contended that he cannot be held responsible for any alleged violation of Companies Act or SEBI Act by AHL as he was employed as an executive director of AHL from May 01, 2006 onwards. He claims to have been a salaried employee of AHL and to have worked under the total supervision of AHL. He claims that he was not a *de facto* director of AHL and hence had no reason to question the activities of AHL. Further, the Noticee has claimed in his reply that Interim Order and the documents obtained during inspection demonstrate that SEBI has been unable to make out a case for holding the Noticee liable for acts of AHL. According to him, the Noticee cannot be assumed to have actively participated in the affairs of AHL. From the discussion in the said paragraphs above, I note that sufficient material has been brought on record to show that the Noticee had signed multiple documents as director/ whole time director of AHL. I note that each of the allotments were arising from different board resolutions passed between the years 2006 and 2009. I note that he had signed balance sheets and notes to accounts of AHL for 3 consecutive years wherein it is evident that AHL has issued RPS *(copies of which were provided to the Noticee along with AHL letter dated November 30, 2010 at the time of inspection held on August 17, 2022)*. I also note the Noticee has signed the resolution passed in EGM of AHL held on January 24, 2007 for issuance of 1.5 crores RPS of Rs 10 each *(copy of which was provided to the Noticee as part of email dated November 25, 2022)*. Feigning ignorance about the affairs of AHL when the Noticee was an executive/ whole time director for 7 years, and when he admittedly was functioning in a senior official capacity prior to being appointed as an executive director, is not justifiable.

36.6. ***Judicial decisions cited by the Noticee***

The Noticee has relied upon certain orders of Hon'ble SAT to buttress his submission that to hold directors of a company liable, it is necessary to show their involvement in day-to-day affairs of company. The decisions cited by the Noticees and my observations on their applicability to the facts of this case are provided below.

36.6.1. Dr. Uppal Devinder Kumar case: I find that reliance on order passed by Hon'ble SAT in *Dr. Uppal Devinder Kumar (supra)* is misplaced for two reasons (i) in the Uppal Kumar case, the appellant was a director only for 50 days, whereas in the present case, the Noticee was an executive director of AHL from the years 2006 to 2013 *i.e.,* for nearly 7 years; (ii) in the aforesaid case, Hon'ble SAT found that appellant therein was not involved in either launching or carrying out collective investment scheme, whereas in the present case, as noted in the preceding paragraphs, the Noticee had signed multiple documents in his capacity as director.

36.6.2. Sayanti Sen case: Reliance on *Sayanti Sen (supra)* is misplaced since the facts differ. In the said order the Hon'ble SAT had given a categorical finding that (i) there was no evidence against the role of appellant therein; (ii) one Shib Narayan Das who was the managing director of the company was responsible for affairs of the company, both of the aforesaid facts are absent in the present case. The material available on record in the present case do not reveal the existence of a managing director during the relevant period in time. Rather, the available documents sufficiently demonstrate that the Noticee was actively involved in the affairs of AHL.

36.6.3. Sunil Mittal and Gaurava Varshney cases: The Noticee has placed reliance on the case of *Sunil Bharati Mittal (supra)* to contend that in absence of sufficient evidence of active role or a statutory provision which imposes vicarious liability on behalf of company, vicarious liability cannot be imposed on the Noticee. He has also placed reliance on decision of *Gaurava Varshney (supra)* to state that liability depends on the role played by an accused and not merely his designation. I find that role of the Noticee in AHL has been suitably brought out before. I find that I have explained in detail how the Noticee has signed returns of allotment, balance sheets of AHL *etc.,* which show that the Noticee was complicit in the issuance and collection of money through RPS by AHL. Also, it is important to note both the aforesaid decisions were rendered in the context of criminal proceedings, where the burden of proof is higher, whereas the present proceedings are civil in nature. I therefore find that reliance on the aforesaid judgments of Hon'ble Supreme Court by the Noticee is misplaced.

36.6.4. <u>Subhra Sardar case</u>: The Noticee has also placed reliance on the decision passed by Hon'ble SAT in *Subhra Jyoti Sardar (supra)* wherein it was held that in absence of any finding that the appellant was involved in the day-to-day affairs of the management of the company or was involved in the collection of the non-convertible debentures coupled with the fact that there is a managing director in the company who is overall responsible and is an officer in default under section 5 of the Companies Act, the impugned order cannot be sustained against the appellant. I find that the facts of the aforesaid case are distinguishable from the present case. *First*, in the aforesaid case, the appellant was appointed as a non-executive director, whereas in the present case, the Noticee was appointed as an executive/whole time director in AHL. *Second*, in the aforesaid case, the appellant had lodged a complaint against the fraudulent activities against the company whereas in the present case the Noticee, during his 7-year long association with the company as a whole time director, he had made no such complaints or taken steps to ensure that the company remains compliant with the law. *Third* and most importantly, in the aforesaid case there was a clear finding in the order appealed against that a managing director was present during the tenure of appellant. However, in the present case, as noted earlier, there is no available record of the existence of a managing director during the relevant period.

36.7. ***Role of RBI and NBFC***

36.7.1 The Noticee has relied on paragraph 4(j) of 2014 RBI Order which according to him records RBI's view that the Noticee had no active role in the functioning of AHL and that the Noticee was only an employee nominated as director. The relevant extract from the 2014 RBI Order is reproduced below:

"Further, the <u>directors admitted</u> during inspection as also during meeting (<u>Shri Balvir Singh</u> and Shri C.S. Chauhan) held at RBI, New Delhi on April

11, 2013 that they had no active role in the functioning of the company and were employees nominated as directors. The said directors of the company <u>*expressed ignorance*</u> *about prudential norms applicable to Non-Banking (Non-Deposit taking Systemically Important Financial Companies) and* <u>*admitted*</u> *that they did not play an active role in the day-to-day affairs of the company. The directors* <u>*also stated*</u> *that all the operations of the company were carried out from their office in Chandigarh and that no operations were carried out from the Registered Office of the company. Hence, the intentions of the company are suspicious and general character of the management is prejudicial to the public interest..."*

(emphasis supplied)

On perusal of the said order, I find that RBI has merely recorded the submission of the Noticee regarding his role in AHL. Contrary to what the Noticee has claimed, there does not appear to be any view expressed or conclusion arrived at by RBI regarding the role and liability of the Noticee as director of AHL. The 2014 RBI Order was only with respect to the suitability of AHL to function as an NBFC. Therefore, the contention that the 2014 RBI Order found that the Noticee was only an employee in the company and only director in name, is factually incorrect and misleading.

36.7.2 The Noticee has also contended that AHL being a NBFC was subject to regular audits, and since there was no adverse direction/remark against AHL, the Noticee had no reason or means to know that AHL was committing activities in violation of law. I find that the responsibility of the Noticee, as a director, to ensure that the affairs of the company were in compliance with the law is independent of the responsibility of these functionaries undertaking audit. After signing several documents wherein fact of raising money through RPS is explicitly recorded, the Noticee cannot plead that he was unaware of violations committed by AHL. I find that the Noticee had signed balance sheets of AHL for FYs 2007, 2008 and 2009 *(copy was provided to the Noticee at the time of inspection held on August 17, 2022)*. I note that the material available on record does not suggest that the Noticee had taken efforts to ascertain the truth behind raising money through RPS by AHL. The Noticee has also not made any submissions to this effect. Rather he has sought to distance himself from the company's affairs by claiming to have only functioned as an employee during the 7 years of his tenure as director. Therefore, the contention of the Noticee is without merit.

TENURE OF DIRECTORSHIP

37. Determination of the tenure of the Noticee's directorship, particularly the date of his appointment as executive/ whole time director, is essential to determine which tranches of RPS allotments he would be responsible for. I note that the 2015 Final Order records that the Noticee was appointed as a director on November 02, 2005 and resigned on October 15, 2013. Similarly, the 2021 WTM Order which was set aside by Hon'ble SAT *vide* the 2022 SAT Order states that the Noticee was appointed on November 02, 2005 and that he was a director during all the 10 tranches of the allotment of RPS and resigned later on October 15, 2013. The Noticee has contended that he was appointed on May 01, 2006. On perusal of documents from MCA website *(copies of which were provided to the Noticee vide emails dated November 25, 2022 and January 16, 2023)*, I note that certain documents state that the Noticee was appointed with effect from April 01, 2006.

38. Therefore, there are three different dates of appointment of the Noticee which are available before me. I have perused all the available documents to arrive at a conclusion as to which date is the most likely to be the date of the Noticee's appointment as director. My observations and conclusions with respect to the probable correct date of appointment are detailed below.

39. First date is May 01, 2006 as submitted by the Noticee. The Noticee has contended basis his appointment letter that he was appointed on May 01, 2006. I find that he has not submitted anything apart from an appointment letter to support his claims that his appointment was effective from May 01, 2006. Purely on the basis of a single document, I find it hard to accept that Noticee was appointed from May 01, 2006 when there are multiple documents stating otherwise. Further, the nature of document produced by the Noticee is only an appointment letter. The absence of any other official document such as a board/ shareholder resolution, official filing with RoC *etc.*

that corroborate this appointment letter leads me to the conclusion that the date of appointment suggested by the Noticee may be incorrect and must be disregarded.

40. Second date is November 02, 2005 as the 2015 Final Order and 2021 WTM Order states that the Noticee was appointed on the said date. I find that annual returns for the years 2007 to 2012 provided by AHL and available on the MCA website record the aforesaid date as the appointment date of the Noticee.

41. Third date is April 01, 2006 and the documents listed below cite this date as being the date of the Noticee's appointment which were provided to the Noticee *vide* emails dated November 25, 2022 and January 16, 2023:

(i) Certified true copy of the resolution passed by board of AHL in its meeting held on April 01, 2006 *inter alia* states that the Noticee is appointed as executive director of AHL with effect from April 01, 2006 for 5 years, upto March 31, 2011.

(ii) Notice for EGM of members of AHL to be held on May 30, 2006 dated April 25, 2006 seeks approval for appointment of the Noticee for 5 years commencing from April 01, 2006 to March 31, 2011.

(iii) Certified true copy of resolution passed in the meeting of shareholders of AHL held on May 30, 2006 states that AHL has accorded its consent for appointment of the Noticee with effect from April 01, 2006 upto March 31, 2011.

(iv) Copy of Form 32 (Particulars of appointment of managing director, directors, manager and secretary and the changes among them) states that there was a change in designation of the Noticee on April 01, 2006, and the designation of the Noticee is listed as "whole-time director" and under the category of "whether chairman, executive director, non-executive director", "executive director" is marked.

(v) Explanatory statement annexed to notice for EGM of members of AHL to be held on April 11, 2011 dated March 15, 2011 states that the Noticee was appointed for 5 years commencing from April 01, 2006 to March 31, 2011.

42. Between the date cited in the 2021 WTM Order *(i.e.,* November 02, 2005) and the date seen in several documents on the MCA website (*i.e.,* April 01, 2006), I find that the latter is more credible for the reason that several documents listed in paragraph above cite the same date. The documents cited in paragraph above *i.e.,* Form 32, board resolution, notice to EGM and shareholder resolution take precedence over the annual returns as a Form 32 or a board resolution or shareholder resolution are documents that are supposed to be filed by a company shortly after they are passed. On the other hand, annual returns are supposed to be filed yearly after each annual general meeting. I find that there are more chances of error at the stage of filing of such annual returns. Further, I find that a board resolution or special resolution is more specific and detailed to the decision taken by a company, whereas an annual return contains general information about the company such as registered office, shares issued, directors *etc.* The appointment date of November 02, 2005 mentioned in the annual returns of 2007-2012 *(which are documents prepared later in time)* are not corroborated in any other document available on record. The earliest evidence of the appointment, *i.e.,* the board resolution, EGM notice and EGM resolutions *etc.* of 2006 which record his appointment as of April 01, 2006 constitute better proof of the date of the Noticee's appointment as a director in AHL.

43. In view of the above, I find that it is more probable that the date of appointment was April 01, 2006 and not November 02, 2005 as had been concluded in the 2021 WTM Order. The view taken in this Order with respect to his appointment date does not impinge on other important evidences present in this case which point to his culpability in AHL's affairs which have been dealt in detail in paragraphs above.

Conclusion on liability of Noticee

44. Section 56(4) of the Companies Act casts liability on *"a director or other person responsible for prospectus".* Section 60(5) of the Companies Act casts liability on *"every person who is knowingly a party to the issue of the prospectus"* and Section 69(5) casts liability on "*the directors of the company*". The Noticee, being an executive

director of AHL for nine out of ten issues of RPS offered by AHL along with signing numerous documents of AHL such as Form 2 (return of allotment), balance sheet and annual return for years is liable for violation of sections 56, 60, and 69 of Companies Act. Further, during his tenure, there is no evidence to suggest that any other person was acting as the managing director of AHL, therefore, he is liable as an "officer in default" under section 73(2) of the Companies Act. Based on a comprehensive analysis of the material available on record (including documents received from the company (AHL), publicly accessible documents on the MCA website, the replies filed by the Noticee and annexures/ documents enclosed thereto) and for the reason elaborated in preceding paragraphs, I find that the Noticee was an "Officer in Default" of AHL during the impugned period. He was actively involved in the affairs of the company and responsible for its activities including those relating to issuance and allotment of the issue of RPS. Out of the RPS allotments recorded in Table 6 above, the Noticee would not be liable for the RPS allotment *vide* resolution dated March 25, 2006 but would bear liability for all other RPS allotments recorded in Table 6 above.

45. Lastly, the Noticee has pleaded his old age, physical ailments and the tenure of the proceedings as mitigating circumstances. I have considered these circumstances without losing sight of aggravating factors like the gravity of the default and its implications on the public at large. AHL during the years 2006 to 2009 had issued RPS to 4,26,676 investors. The Noticee was a director of AHL for substantial part of the aforesaid period. His actions have affected lakhs of investors and has undermined the integrity of the securities market. Hence, I find that the act committed by the Noticee deserves to be dealt with sternly.

46. **DIRECTIONS**

In view of the above and considering the directions passed by SEBI *vide* orders dated August 14, 2015 and June 18, 2021 in the matter of RPS issuance by AHL, I, in exercise of powers conferred upon me under sections 11 and 11B of the SEBI Act read with section 19 thereof, hereby issue the following directions:

46.1. Mr. Balvir Singh shall, jointly and severally, along with AHL and its other directors mentioned in the 2015 WTM Order and the 2021 WTM Order forthwith refund to the investors the money collected by AHL through issuance of RPS as recorded in Table 6 read with finding at paragraph 44 above (including the application money collected from investors during his tenure as an executive director of AHL, till date, pending allotment, if any), with an interest of 15% per annum from the eight day of collection of funds till the date of actual payment.

46.2. 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.

46.3. Mr. Balvir Singh is directed to provide a full inventory of his assets and properties and details of all his bank accounts, demat accounts and holdings of mutual funds/shares/securities, if held in physical form and demat form within 30 days from the date of this Order.

46.4. Mr. Balvir Singh is only permitted to sell his assets, properties and holding of mutual funds/shares/securities held in demat and physical form, for the sole purpose of making refund as directed above and depositing the proceeds in an escrow account opened with a nationalized bank. Such proceeds shall be utilized for the sole purpose of making refund to the investors till the full refund as directed above is made.

46.5. Mr. Balvir Singh shall along with AHL and its other directors 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 30 days of this Order coming into effect.

46.6. After completing the aforesaid refund, 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 any previous payments effected, or made as per modes mentioned in paragraph 46.2 above. 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.

46.7. In case of failure of Mr. Balvir Singh to refund as per paragraph 46.1 above, SEBI, on the expiry of 3 months period from the date of this Order coming into effect, may recover amounts specified in paragraph 46.1 above from him in accordance with section 28A of the SEBI Act.

46.8. Mr. Balvir Singh is restrained and prohibited from buying, selling or otherwise dealing in securities, in any manner whatsoever, directly or indirectly, 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. Balvir Singh is also restrained from associating himself with any listed company and any public company which intends to raise money from the public from the date of this Order, till the expiry 4 (four) years from the date of completion of refunds to investors as directed above.

46.9. Subject to direction contained in paragraph 46.4 above and 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 Mr. Balvir Singh shall remain frozen.

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

47. In view of the proceedings before the Hon'ble Justice (Retd) S. P. Talukdar in the matter of Alchemist group of companies on directions of Hon'ble Calcutta High Court, the effect and implementation of the aforesaid directions stated in paragraph 46 excluding 46.3 and 46.8 shall be subject to the directions passed by Hon'ble Justice (Retd) S. P. Talukdar or any other committee appointed by Hon'ble HC of Calcutta in this regard.

48. This Order is without prejudice to any other action that may be taken by SEBI in accordance with securities laws against Mr. Balvir Singh.

49. Copy of this Order shall be forwarded to the Noticee, recognised stock exchanges, depositories, registrar and transfer agents and Hon'ble Justice (Retd) S. P. Talukdar Committee for information and necessary action.

50. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/ concerned RoC, for their information and necessary action with respect to the directions imposed above against the Noticee as a director of AHL.

DATE: MARCH 20, 2023 **ANANTH NARAYAN G.**
PLACE: MUMBAI **WHOLE TIME MEMBER**
SECURITIES AND EXCHANGE BOARD OF INDIA