QJA/SS/DDHS/DDHS-SEC-1/31624/2025-26

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11(1), 11(4), 11A AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.

In respect of:

Noticee No.	Name	PAN
1	Katalyst Software Services Limited	AAFCK7288Q
2	Rahul Dilip Shah	BIZPS1023F
3	Trupti Pandit	AHCPP5696E
4	Nishant Upadhay	AAUPU1329G
5	Vivek Padam Ghai	AHXPG5770F
6	Yogesh Agarwal	AAUPY0909N
7	Pravin Kisanrao Arote	ABFPA1970M
8	Milind Rajaram Karandikar	AKTPK4105H

(The abovementioned persons are hereinafter individually referred to by their respective names or Noticee number and collectively as "the Noticees")

In the matter of Katalyst Software Services Limited

1. Katalyst Software Services Limited (hereinafter referred to as "**KSSL**"/"**Noticee No.1**") is a company dealing in the business of software products, technology service provider and engaged in domains like ERP, supply chain & logistics, engineering & manufacturing, digital & and e-commerce, professional services and publishing. Mr. Rahul Dilip Shah (Noticee No. 2) and Ms Trupti Pandit (Noticee No. 3) were the first promoter and director of KSSL.

2. In August 2023, SEBI received a complaint from Noticee No. 2, vide his letter dated August 29, 2023 raising concerns with regard to the following :-

a. **Collusion of Karvy Capital Limited(hereinafter referred to as 'Karvy') with majority shareholder group and manufactured event of default to enrich majority shareholder group:** One Mr. Sudhir Valia is actively managing the board interfering with the day-to-day operations of the business leading to restructuring negotiation with Karvy and providing resources for the board to engage in scheme to defraud investors.

b. **Invocation of pledge:** Due to non-payment of EMI towards NCDs issued by KSSL, Karvy declared event of default on January 2022 and invoked pledge of shares of Noticee No. 2 and KSSL. Karvy also recalled the entire debentures and made the debenture amount due and payable immediately. The action of invocation of pledge by Karvy was challenged by him before the Hon'ble Delhi High Court with plea that Karvy must take out valuation of pledged shares before undertaking its sale.

c. **Restructuring of Debenture Trust Deed post his resignation from KSSL:** Karvy has restructured KSSL's loan account in terms of debentures and the interest rate has been reduced to 12% from 15%. His shares were pledged in the capacity of promoter and director having management control of KSSL and upon his resignation and regularization of loan the event of default has been cured and Karvy ought to have returned his pledged shares.

d. **Refusal of Karvy to inform Noticee No. 2 about the status of his pledged shares:** Under the pretext of event of default, Noticee No. 2 as well as KSSL's share pledge had been invoked by Karvy which had restructured the loan and returned KSSL's pledged shares however, Noticee No. 2's share continue to remain pledged with Karvy.

e. **Scheme of Arrangement**: On August 2023, Noticee No. 2 became aware of the proposed composite scheme of arrangement between KSSL, Nova Techset Limited (NTL) and Panacea Infotech Private Limited (Panacea) and their respective shareholders and creditors. As per the scheme, KSSL's liability under the Debenture Trust Deed is sought to be transferred from KSSL to NTL. Karvy has given its consent to the scheme. The scheme envisages twofold transactions, firstly, demerger of the e-business solution division of KSSL into NTL and subsequently Panacea would amalgamate into NTL. The stated reason for demerger is that the e-business division of

KSSL has potential for growth and by separating the same from KSSL into NTL, it would result in a focused exploration of the commercial opportunities.

f. As per the proposed scheme, the shares held by Karvy in NTS i.e 100% share capital of NTS will be cancelled by virtue of the demerger. Karvy has agreed for the cancellation of pledge security worth Rs. 300 crores which were being held for protecting the interest of debenture holders.

g. Noticee No. 2 has voting rights on the pledged shares representing 26% of the paid-up share capital of KSSL. Before invocation of pledge, Noticee No. 2 would exercise voting rights. Post invocation, his shares were transferred to the demat account of Debenture Trustee because of which he was deprived of voting rights. Post curing of default by KSSL had Karvy returned his pledged shares back, the proposed scheme of arrangement would never have been contemplated.

h. **Effect of Scheme**: Rs. 75 crore NCDs will get transferred to NTS and Rs. 1.54 crores held by KSSL in NTS will get cancelled. NTS will cease to be a subsidiary of KSSL. NTS will allot redeemable preference shares to shareholders of KSSL.

i. **Share Entitlement Ratio**: For every 2373 equity shares of Rs. 10/- of KSSL, 100 Non-cumulative redeemable preference shares of Rs. 10/- shall be issued to shareholders of KSSL. In aggregate, a total of 5,32,062 8.5% Non-cumulative preference shares of Rs. 10/- each shall be issued to the shareholders of KSSL aggregating to Rs. 53,20,620/-

j. **Karvy's locus to grant no-objection to the scheme**: As Karvy is the power holder of debenture holders, the sanction to scheme must be granted by individual creditors and not acting through power of Attorney.

k. **Possibility of misappropriation of pledged shares**: In the absence of any communication from Karvy with respect to pledged shares, Noticee No. 2's has expressed his concern over Karvy selling or creating third party rights over his pledged shares.

3. Pursuant to the above complaint, SEBI conducted examination into the issuance of Non-Convertible Debentures (NCDs) by KSSL in order to ascertain any possible violations of

the public issue norms stipulated under the Companies Act, 2013, the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**the SEBI Act**"), Securities and Exchange Board of India (Issue and listing of Debt Securities) Regulations, 2008 (hereinafter referred to as "**the ILDS Regulations**") and the rules and regulations framed under the SEBI Act. SEBI observed that :-

(a) In the financial year 2017-2018, KSSL had issued 75,00,00,000 NCDs to Karvy, details of which are as under:

Year	ISIN	Date of Allotment	No. of Allottees	Amount Raised	No of Debentures
2017-18	INE463Y07019	8/8/2017	1	52,00,00,000	52,00,00,000
		6/9/2017		12,50,00,000	12,50,00,000
		21/09/2017		7,00,00,000	7,00,00,000
		10/10/2017		3,50,00,000	3,50,00,000
		Total	**1**	**75,00,00,000**	**75,00,00,000***

**The figure was inadvertently shown as 75,00,000 in the SCN.*

(b) As on January 26, 2018 i.e. in less than 6 months from the issuance of above NCDs (i.e August 08, 2017) to Karvy, the aforesaid debentures were held by 699 persons as detailed below:

Year	ISIN	Benpos Date	No. of debenture holders	Total Amount Holding
2017-18	INE463Y07019	26/01/2018	699	75,00,00,000

(c) KSSL had not issued any prospectus or circulate any application forms as the allotment was done on Private Placement basis and did not make any application to the recognised stock exchanges for listing of its above NCDs.

(d) As the above NCDs were held by over by 600 persons, it was inferred that the above '*offer*' of NCDs by KSSL was made to more than 200 persons through Karvy in FY 2017-18 which

qualified as a public issue under the provisions of Section 42(2) of the Companies Act 2013 read with Rule 14(2) of Companies (Prospectus and Allotment of Securities) Rules, 2014 ('**the 2014 Rules'**). Thus, the issue of NCDs was deemed to be a public offer.

4. In view of the above observations, the instant proceedings were commenced by issuance of a Show Cause Notice ("SCN") dated October 16, 2024 to the Noticees calling upon :–

   (i) Noticee No. 1 to 4 to show cause as to why appropriate directions, including directions to refund money mobilized through issuance of NCDs and prohibiting from accessing securities market, be not issued against them under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with Section 2(60) of the Companies Act, 2013; and

   (ii) Noticee No. 5 to 8 to show cause as to why appropriate directions, including direction to ensure that the investors receive the refund as per law failing which Noticee No. 5 to 8 may be prohibited from accessing securities market, be not issued against them under Sections 11(1), 11(4), 11A and 11B of the SEBI Act read with Section 2(60) of the Companies Act, 2013.

Appeal Before Securities Appellate Tribunal (SAT).

5. In the meantime, Noticee No. 2 challenged the SCN in an Appeal No. 659 of 2024) filed by him before the Hon'ble SAT which was dismissed by Hon'ble SAT, vide order dated November 21, 2024, as withdrawn with liberty to urge all contentions before SEBI.

Replies and Hearing.

6. The Noticees filed their replies and availed opportunity of personal hearings in the matter as detailed in the following table: -

Noticee No.	**Noticee Name**	**Date of submission(s)**	**Date of hearing**	**Authorized Representative (AR)**
1, 5 to 8	Katalyst Software Services Limited, Vivek Padam Ghai, Yogesh Agarwal, Pravin Kisanrao Arote	Common reply dated November 13, 2024 and June	June 17, 2025	Mr. B Narasimham and Mr.

	and Milind Rajaram Karandikar	28, 2025 with Noticee No. 5 to 8.		Kuldeep Ruchandani,
2 and 3	Rahul Dilip Shah, Trupti Pandit	July 1, 2025 July 8, 2025	July 1, 2025	Mr. Raj Dani,
4	Nishant Upadhay	December 13, 2014 June 17, 2025 June 30, 2025	June 17, 2025	In person

Submissions of the Noticees:

7. The replies and submissions of the Noticees are summarized as following:

Noticee No 1, 5, 6, 7 and 8.

7.1 Noticee No. 5, 6, 7, and 8 were not holding any position in KSSL at the time the offer and allotment of NCDs by it to Karvy and was not responsible for any act or omission of earlier management. KSSL under the 'old management' started defaulting in its payment obligations since October 2019 due to operational and management reasons which lead to default and invocation of pledge under the terms of the Debenture Trust Deed. The 'new management' has engaged in the discussions with Karvy and Debenture Trustees for payment of outstanding debt and has entered in a third amendment of Debenture Trust Deed dated April 22, 2023 for regularising the defaults.

7.2 The NCDs issued by KSSL were allotted solely to Karvy - A/c Demeter Portfolio under a private placement arrangement and thus cannot be deemed to be a public offer. The issuance was structured under the private placement framework with Karvy as the sole offeree, in line with the provisions of Section 42 of the Companies Act, 2013.

7.3 KSSL was not involved in Karvy's subsequent distribution of these securities to over 600 investors. This redistribution was executed solely by Karvy in their independent capacity, with no direction or influence from KSSL. Under the Companies Act, 2013 and applicable SEBI regulations, NCDs are freely transferable instruments, particularly when held in dematerialised form. There is no statutory restriction or lock-in period applicable for issuance of these securities. Once the NCDs were issued and credited in dematerialised form to the depository account of Karvy they became freely transferable

through off market trades, which was beyond the control of the KSSL or Noticees No. 5 to 8.

7.4 The ILDS Regulations pertain specifically to the public issuance and listing of debt securities. Further, in accordance with the provisions of the Debenture Trust Deed, the debentures were expressly designated as unlisted, with an obligation to list them within 15 days only upon request from Karvy for the listing of the NCDs. KSSL has not violated the provisions of the ILDS Regulations as the NCDs were neither allotted to the public nor intended for public offering nor were listed on stock exchange for sale for purchase by public.

7.5 KSSL became aware of the change in beneficial ownership of the NCDs subsequent to the transfers effected, only through the Beneficial Position (BENPOS) statements provided by the National Securities Depository Limited (NSDL) through the Registrar and Transfer Agent (RTA), which was much later after the transactions had been registered by the Depository. The Hon'ble SAT in ***Avenue Supermarts Limited v. SEBI*** held that mere receipt of BENPOS (Beneficiary Position) data cannot be treated as constructive notice, as such data has limited regulatory use and is not intended as a basis for disclosure obligations under securities law. Per Joshi J., *"Reliance made by the AO on BENPOS report is incorrect. The data is meant for a different purpose under the Depositories Act and cannot be treated as a disclosure tool under the PIT Regulations."*

7.6 In line with market practice and applicable regulatory framework, KSSL had appointed MUFG Intime India Private Limited (formerly Link Intime India Pvt. Ltd.) as its Registrar and Share Transfer Agent (RTA). All registers and records related to the NCDs, including the Register of Debenture Holders and any changes in beneficial ownership, are maintained by the RTA and depositories, not by the KSSL directly.

7.7 Attention is drawn to adjudication order passed by SEBI in the matter of Utkarsh Small Finance Bank Limited, (USFBL) wherein the facts and legal issues bear absolute similarity to the present case. In that matter, the issuer company- Utkarsh Small Finance Bank Limited based on the Order passed by SEBI and with a purpose to take a moral stand before the concerned authority, which monitors the compliances

under the Companies Act, had approached the Registrar of Companies (ROC), Uttar Pradesh, for compounding of an alleged violations under Sections 33(1) and 42 of the Companies Act, 2013. The ROC, after considering the circumstances, disposed of the application without initiating any action, having concluded that: *"...in the facts and circumstances of the case, the alleged violations did not pertain to actions committed by the Noticee, its promoters or directors. The ROC further indicated that in the facts of the present case, the violations had to be adjudicated visà-vis the security-holder, i.e. KCL. However, in terms of the relevant provisions of the Companies Act pursuant to which the present Compounding Application was filed by the Noticee, the ROC did not have the powers to proceed against the security-holder.*" This order establishes a critical principle that when securities are issued through a private placement and issued in electronic form in the Depository system and subsequently transferred without the issuer's knowledge or participation, the liability does not extend to the issuer company unless there is demonstrable intent or involvement.

7.8 Even if the alleged violations are applicable to the Noticees as stated in the SCN, the same are entirely unintentional, technical and venial in nature and may not warrant imposition of penalty as held by Bombay High Court in ***SEBI v. Cabot International Capital Corporation,*** Hon'ble Supreme Court in ***Hindustan Steel v. State of Orissa and*** in ***Electro Optics v. State of Tamil Nadu*** and Hon'ble SAT in ***PG Electroplast & Ors. v. SEBI.***

7.9 The Noticees have not made any disproportionate gain and no loss has been caused to the investors and Noticees' act are not repetitive in nature under section 15J of SEBI Act. Based on this, the Noticees have requested to not levy any penalty on him and to support the same, the Noticee has relied on the judgments viz., the Hon'ble Supreme Court in ***Siddharth Chaturvedi v. SEBI,*** Hon'ble SAT in ***Vitro Commodities Pvt. Ltd. v. SEBI.*** Moreover, the so called investors by virtue of the acquisition of debentures in their demat account have no complaints against KSSSL and in fact, have consistently being paid the interest and above all, have on all occasions agreed to the changes in the terms of issue based on which the amendment in the Debenture Trust Deed has been made from time to time.

7.10 The article published in the Business Standard dated June 4, 2025 highlights SEBI's recent clearance of DRHPs filed by various companies including HDB Financial Services, Hero FinCorp, and Vikram Solar, each having a significant number of public shareholders due to transfer of shares after initial allotments, prior to the filing of their public offer documents. For example:

- **HDB Financial Services** reportedly had over 41,500 public shareholders,
- **Hero FinCorp** had approximately 7,500,
- **Vikram Solar** had about 7,000, and
- **Waaree Energies,** which has since been listed, had close to 2,600 public shareholders at the time of filing its IPO papers.

7.11 Despite the presence of such large public shareholder bases, SEBI granted clearance to all these companies signalling an explicit regulatory stance that a high number of public shareholders, in itself, does not constitute a violation, particularly in cases where the company has not directly raised capital through a public offer. There have also been news item mentioning the fact that the number of shareholders in NSE has gone beyond one lakh and is expected to get the nod from SEBI for its IPO. This affirms regulators consistent approach of distinguishing issuer liability from off-market transactions—a position that directly applies to KSSL's case.

Noticees 2 and 3.

7.12 Noticee No. 2 has made several submissions, for instance, regarding the convening of extra ordinary general meeting for his removal from the Board of Directors, hostile change of control and management of KSSL, manufacturing event of default and payment obligations, *mala fide* and illegal scheme of arrangement between KSSL, Nova and Panacea, etc. These submissions are outside the purview of the present proceedings as the investigation culminating to the initiation of the instant proceeding for which SCN has been issued is limited to the matter of issuance of NCDs by KSSL and possible violation of the public issue norms, only the submissions falling under the purview of the violations alleged in the SCN is summarized in following paragraphs.

7.13 According to Noticee No.2, he is a citizen of United States of America (USA) . He was founder and CEO of Katalyst USA, wholly owned subsidiary of KSSL. He ceased to be a CEO of Katalyst USA and KSSL with effect from January 12, 2022.

7.14 Katalyst USA conducts business in various jurisdictions across the globe including Asia and Europe. Its client base includes over 200 customers, including Coca-Cola Bottling Group, Simple Green Inc., Putzmeister Amreica, Inc., Ceva Logistics, and Nike Inc.

7.15 In and around November 2012, he was introduced to one Mr. Sudhir Vrundavandas Valia who was representing a group which would be interested in investing in Katalyst USA with the intent that they would come in as financial investors to meet the capital needs of Katalyst USA, while Noticee No.2 would be responsible for the business operations of Katalyst USA. Accordingly, the Valia, Shanghvi, Parekh Group invested funds in Katalyst USA which they collectively owned 50% in Katalyst USA. The investments were made by the following Investment Companies owned by these Groups:

Mr. Sudhir Vrundavandas Valia and Mr. Vijay Parekh [Jointly]	Suraksha Realties Limited	These companies jointly held 50% of common stock of Katalyst USA
Mr. Dilip Shantilal Shanghvi	MJ Pharmaceuticals Ltd (Now merged with Shanghvi Finance Limited)	

7.16 Mr.Dilip Shantilal Shanghvi and Mr. Sudhir Vrundavandas Valia are common promoters of Sun Pharmaceutical Industries Limited (BSE and NSE Listed Company). Mr. Vijay Parekh is the business partner of Mr. Sudhir Valia, and they jointly hold shareholding and stake in Suraksha Realties Limited.

7.17 KSSL was incorporated on January 5, 2015, as a private limited company. During the process of incorporation of the KSSL, Noticee No.2 being an US Citizen his cousin sister Noticee No 3 became subscriber to the Memorandum and Articles of Association along with him and became Promoter Director of KSSL. However, she had no role to play in day to day management of KSSL which was solely managed by Noticee No.2.

7.18 In early March 2017, Mr. Ganesh Shiva Ganesh of Inga Capital Private Limited (now it is called as ITI Capital Limited) sent a proposal for the acquisition of Nova Techset Limited (NTL), a company based out of Bengaluru and engaged in the business of typesetting and prepress publication services. The deal was negotiated for Rs.62 Crores for the acquisition of 100% of the share capital of NTL. Noticee No.2 had discussed the proposal to acquire NTL with Mr. Sudhir Valia, who showed no interest in acquiring the Company and also refused to fund the acquisition. Then, Mr. Ganesh Shiva Ganesh proposed leveraged buyout of NTL by arranging funds from Karvy, a Non-Banking Finance Company.

7.19 The negotiation with Karvy through Inga Capital Limited was initiated in April 2017 and also due diligence of NTL was carried out by M/s Bathiya and Co, Chartered Accountants. Karvy had informed that, KSSL, then a private limited company will have to be converted into a Public Limited Company as one of the conditions of lending the money by way of subscribing to Non-Convertible Debentures ("NCD"). Karvy amongst other requirements had also sighted that, the KSSL will have to launch an IPO for raising funds to repay Karvy in next 2-3 years from the date of issuance of NCDs. Thereafter, due diligence was conducted and as a legal advisor to transaction M/s Khaitan and Co. ("KCO") was engaged to advise the Company and Karvy with respect to raising of funds and acquisition of NTL. KCO prepared the Term Sheet, Debentures issuance related documents like Debenture Trust Deed, Debenture Trustee agreement. Following Debenture issuance related documents were prepared by M/s Khaitan and Co, Advocates and reviewed by Inga Capital Limited and the Debenture Trustee: -

(a) Debenture Trust Deed
(b) Board Resolutions and General Meeting Resolutions, List of Allottees, Form PAS-4, PAS-5 and Letter of Offer
(c) Debenture Trustee Agreement
(d) Pledge Agreement for pledge of 26% of the capital of KSSL to be pledged out of Rahul Shah shareholding in favour Debenture Trustee
(e) Pledge Agreement for 100% pledge of capital of NTL shareholding in favour Debenture Trustee.
(f) Hypothecation Agreement for KSSL and NTL.

7.20 Noticee No.4 an Advocate was appointed as Non-Executive Independent Director of the Company in June 2017. He was appointed as Non-Executive Independent Director as it was planned to convert the KSSL into a Public Limited Company as it was mandatory to have three directors for conversion of KSSL from Private Limited to Public Limited Company. Noticee No.4 was not involved in day to day activities, control and management of KSSL.

7.21 KSSL approached Karvy, a SEBI registered Portfolio Manager to raise funds for the proposed acquisition of NTL. Pursuant thereto, the Company entered into a Debenture Trust Deed with SEBI registered Debenture Trustee Catalyst Trusteeship Ltd (formerly Milestone Trusteeship Services Pvt. Ltd.).

7.22 SEBI vide its email dated June 12, 2025, incorrectly denied the request made by Noticee No.2 for inspection of documents. Due to on-going dispute between Rahul Shah Group and Valia/Shanghvi/Parekh Group, it is assumed that, KSSL in its reply would have made allegations against NoticeeNo.2. It is also assumed that, they would have tendered the resignation letter dated March 30, 2018 sent by Noticee No 4, there it is important to deal with the resignation of Mr. Nishant Upadhyay.

7.23 It would be apt and suffice to state that, that NoticeeNo.4 was not involved with management and day to day affairs of KSSL. Furthermore, the contents of the resignation letter dated March 30, 2018 of Noticee 4 was dealt with, addressed and cured with consent of the Karvy. Post his resignation, the KSSL entered into First Amendment to Debenture Trusty Deed with Karvy, which covered the contentions amongst other issues. Therefore, the issues raised by him were addressed and cured and as of today, it is simply *non-est*.

7.24 Section 42 requires a positive action by the company—i.e., an actual offer or invitation to subscribe. If no such act is undertaken, Section 42 is not triggered. The numerical limitation in Section 42(2) applies specifically to offers or invitations, not the ultimate number of allottees or members. The numerical cap (200 persons) applies only to offers/invitations for private placement and not to the total number of shareholders or members in a public company. Hence, membership of a company is not limited by Section 42. Section 42 regulates private placements to prevent public-like securities

offerings without a prospectus. It applies only when there is an offer or invitation made to more than 50 persons but not exceeding 200 persons in a financial year (subject to exceptions). The section mandates compliance with procedural and substantive requirements and offers made to a single person or without a clear act of invitation are outside its scope.

7.25 A key condition for the applicability of Section 42 is that the offer or invitation must be made to a *"select group of persons*." The use of the word "*group*" implies that the offer should be made to more than one person — an offer to a single person does not attract the provision of this section. The ordinary understanding of "*group*" requires at least two or more persons with some unifying factor. Moreover, under sub-section (2) of Section 42, any such offer or invitation can only be made to such number of persons as may be prescribed, which initially was fifty but has been expanded under Rule 14(2)(b) of the 2014 Rules to not more than 200 persons in the aggregate in a financial year.

7.26 The direction as contained in the SCN is patently illegal and *ultra vires* the provisions of section 42(10) of the Companies Act, 2013 as per the provisions of section 42(10) of the Companies Act, 2013 and judgement of SAT in ***G Unnikrishnan Nair Vs. SEBI*** dated September 27, 2019.

7.27 If SEBI is of the view, that KSSL has not complied with the provisions of section 42 of the Companies Act, 2013, then SEBI can only invoke 42(10) and 42(11) of the Companies Act, 2013. Further, Section 42(10) of the Companies Act, 2013 clearly specifies that, liability to refund the share subscription to the subscribers' rests only with the KSSL and not with the 'officer in default'

7.28 Due to non-joinder of key parties i.e. Karvy and Catalyst Trusteeship Services Limited (the Debenture Trustee) has rendered the SCN as *ultra vires* and bad in law and simply unenforceable. The instant case involving KSSL bears a striking resemblance to the precedent set in the matter of Vaishno Devi Dairy Products Limited, as detailed in SEBI's order dated April 27, 2022. In that case, Non-Convertible Debentures (NCDs) were allotted to the Karvy– Demeter Portfolio Account, and SEBI found significant violations relating to the manner in which such NCDs were transferred and managed.

Karvy Capital Limited was accordingly penalised by SEBI for its non-compliance with the applicable provisions of the Companies Act, 2013 and various SEBI Regulations.

7.29 The non-inclusion of Sudhir Valia as a party to the present proceedings has rendered the present proceedings as illegal and non-binding.

7.30 The principle of vicarious liability of directors under company law and securities law arises only in cases where there is clear and compelling evidence of active participation, knowledge, or connivance on the part of the director in the alleged contravention. Mere holding of a directorial position, without any material involvement in the alleged act, is, by judicial precedent, insufficient to attract personal liability. In ***SMS Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89),*** it unequivocally states that "*a director can be made liable only if there is a specific act or omission on his part showing participation, knowledge, or neglect*." This standard of "*mens rea*" or guilty mind is a fundamental threshold for establishing personal liability, particularly in quasi-criminal or regulatory offences under corporate law, and it is entirely absent in the facts presented here.

7.31 As a whistleblower who submitted a formal complaint to SEBI in August 2023 against KSSL and Karvy, Noticee No. 2 is entitled to protection. The issuance of a SCN is retaliatory and undermines the whistleblower framework intended to encourage the disclosure of corporate misconduct.

7.32 Karvy had not disclosed to Board that, they intend to transfer the NCDs to more than 200 individuals in one financial year and neither the Debenture Trust Deed and the Debenture Documents disclosed anywhere that, Karvy will transfer these NCDs to more than 200 Individuals.

7.33 Though Karvy is defined as Debenture Holder Representative in the Debenture Trust Deed, but it does not mean, Karvy can perform an act, which would be in violation of provisions of Companies Act, 2013 / SEBI Act and Rules/Regulations made thereunder.

7.34 It is settled position of law that Promoter and Officer in Default is liable for the acts of the Company and not for the acts of third parties. In Registrar of Companies, Gwalior vide its order dated May 18, 2023 bearing no: ROC-G-ADJPEN/u/6 42(6)/Excel Vehicle/390-394 dated May 18, 2023 penalised Excel Vehicles Private Limited under section 42(10) of the Companies Act, 2013 for Rs.2 Crores and no order was passed against its Directors. Furthermore, Excel Vehicles Private Limited was directed to refund the money to the subscribers/allottees and not by the Directors of Excel Vehicles Private Limited.

Noticee No. 4

7.35 He was appointed as a Non-Executive Professional Independent Director of KSSL as per his letter of appointment dated June 16, 2017. He was a practising advocate and not involved in the business or day to day management of KSSL, thus, he cannot be held liable as an officer of default of KSSL. During the investigation, KSSL had submitted certain information with SEBI, however, my designation was shown as Director, whereas I was appointed as Non-Executive Independent Director on the Board of KSSL. Under intimation to SEBI, I had sought clarity from KSSL copy of which was marked to SEBI, with regard to my status during the 2017-2018 vide letter dated May 30, 2025.

7.36 The NCDs were allotted to Karvy in physical form initially, which was later dematerialised by Karvy. Post dematerialisation of NCDs, KSSL and its Board of Directors didn't have any control over the transferability of NCDs and neither any pre-request came to KSSL or its Board to approve any transfer of NCDs.

7.37 The object of the issuance of NCDs was for acquisition of 100% equity share capital of NTL and for general corporate purpose which was met and complied by the KSSL.

7.38 Copy of MCA Circular dated March 2, 2020, bearing no. 1/2020 with title "*Clarification on prosecutions filed on internal adjudication proceedings initiated against the Independent Directors, non-promoters and non-KMP non execution directors – reg"* is attached wherein the Circular makes it clear that the Ministry of

Corporate Affairs intends to exclude the liability of Independent Directors and Non-Executive Directors.

7.39 Notably, the National Company Law Tribunal ("NCLT") applied the directions issued in the said Circular and waived off fines payable by non-executive directors in the matter of *North Eastern Regional Agricultural Marketing Corporation Limited and 11 Others Vs Registrar of Companies in CP No: CP/13/GB/2023 before Hon. NCLT, Guwahati Bench.* In this regard, Noticee No. 4 has relied on various order as under:

i. *SEBI in the matter of Alchemist Holdings Limited dated July 12, 2023.*
ii. *Judgment of Hon. SAT in Sayanti Sen Vs SEBI in SEBI Appeal No: 163 of 2018 dated August 9, 2019*
iii. *Manoj Agarwal vs. SEBI (Appeal No. 66 of 2016 decided on 14.7.2017)*
iv. *Mr. Yogesh G. Gemawat vs. SEBI (Appeal No. 227 of 2016 decided on 16.04.2019)*
v. *Pritha Bag vs. SEBI (Appeal No. 291 of 2017 decided on 14.02.2019)*

7.40 The term '*Offer'* and '*Allotted'* has huge significance as the mandate of law is that, the issuer company knowingly offers the securities to more than 200 subscribers and post receipt of share subscription money, also allots the securities in one financial year. In the instant case, the KSSL had made preferential allotment without any advertisements or public dissemination of information, strictly to Karvy within the framework of private placement of securities per provisions of Companies Act, 2013 and 2014 Rules made thereunder.

7.41 Allottee of the NCDs herein Karvy making a subsequent transfer of securities/NCDs to more than 200 in demat form can be termed to be a deemed public issue is a Question of Law. As at the relevant time of allotment of NCDs to Karvy, the Board of Directors of KSSL had no information, clue, whisper or knowledge if Karvy would be transferring these NCDs to others let alone to securities holder in excess of 200 in less than a financial year.

7.42 If a company does not make an offer to more than 200 persons at a time or by a single offer or several offer in one financial year, the prohibition stipulated in subsection (2) cannot apply. To reiterate, there is no restriction on the number of members a public company can have and the number stipulated in this section cannot be read as restricting the number of members or the maximum number of members. However,

this provision pertains to members holding shares of the Company as part of paid-up share capital of the company and not otherwise.

7.43 In terms of law of contract, an application by any person for a share or debenture is an "*offer*" and allotment by the company is "acceptance" and the contract becomes binding when the acceptance is communicated by the company to the allottee. It has been held that an application for shares is an offer and likely any other offer must not only be accepted, but the acceptance must be communicated to the person making the offer. The words used in sub-section (2) are the offer of securities or invitation to subscribe (for) securities. Thus, there must be an offer or invitation made by the company. This provision requires satisfaction of two conditions to attract it; first, there must be an offer or invitation for subscribing for securities of the company; secondly the offer or invitation to more than 50 persons, the prohibition cannot apply. Therefore, unless a company offers and makes an invitation to apply for allotment to more than 50 persons in single invitation, it cannot be deemed to be a public issue. The words in sub-section (2) are clear and unambiguous in their meaning and ought to be interpreted according to their plan literal meaning in the context of issue of securities of a Company; otherwise, it would be doing violence to plain language to construe the provision s covering a case in which there been no offer or invitation or it is not made to fifty or more persons.

7.44 Section 42(7) of the Companies Act, 2013 lays down that, all offers covered under this section should be made only to such persons whose names are recorded by the Company prior to the invitation to subscribe. In the instant case, the Offer was only issued to Karvy and the NCDs were solely allotted to Karvy.

7.45 Section 42(10) in the Companies Act, 2013 provides that if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty. The ratio of Judgment of this Hon. Tribunal in ***G Unnikrishnan Nair Vs. Securities and Exchange Board of India*** dated September 27, 2019 in

Appeal No: 5 of 2018 with respect to independent director not involved in the day to day affairs is relevant here.

7.46 Under Section 40 (5) of the Companies Act, 2013, if a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees. The liability of refunding the subscription money is solely upon the Company and the Officers in default can be only subject to monetary penalty and not with liability to refund the subscription money.

7.47 During his tenure as an Independent Director, he noticed two key events, which was non-compliance with the provisions of Debenture Trust Deed, which he notified to Noticee No. 2. First non-compliance was creation of charge in the books of Nova Techset Pvt Ltd in favour of Yes Bank Limited without creating charge in favour of Debenture Trustee. Second non-compliance was acquisition of Panacea Infotech Private Limited which KSSL was not allowed to acquire any company or make any other company as a subsidiary without prior approval of the Debenture Trustee. Post his intimation of non-compliance of key clauses of the Debenture Trust Deed, he resigned w.e.f March 30, 2018.

7.48 Karvy is a Non-Banking Finance Company registered with RBI. Therefore, at the time of allotment of NCDs to Karvy, it was a genuine understanding that, Karvy is investing their own proprietary funds in their ordinary course of business.

7.49 In the case of ***Pooja Ravinder Devidasani v. State of Maharashtra, Pooja Ravinder Devidasani v. State of Maharashtra, (2015) 3 SCC (Civ) 384***, the apex court held that just holding the director position would not make a person liable for the company's actions. Certain factors must be considered to make a person liable for the company's activities.

Consideration of Issues and Findings.

8. I have carefully considered the allegations made in the SCN, materials available on record and the replies/submissions of the Noticees. Noticee No.2 has made few technical objections on maintainability of the SCN.I deem it appropriate to first deal with the technical objections raised in this matter.

Delay in issuance of SCN:

9. Noticee No. 2 has contended that that the allotment of NCDs to Karvy was made in August 2017 to October 2017 and the SCN was issued on October 16, 2024 after the delay of 7 years and does not pass the test of reasonable time due to inordinate delay. I note that the examination in the instant matter was taken up after Noticee No. 2 himself had filed a complaint to SEBI in August 2023 with respect to issue of NCDs by KSSL and non-compliance of clauses of Debenture Trust Deed. Pursuant to the examination conducted by SEBI, SCN was issued to the Noticees on October 16, 2024. Given that SCN was issued after about one year from the date of the complaint, I do not agree with the objections of delay in issuance of SCN.

Inspection of replies/documents filed by KSSL with SEBI:

10. The request of the Noticee No.2 for inspection of documents filed by KSSL was denied as all relevant documents for which allegation is framed against the Noticee have been supplied to him as annexures to the SCN. Noticee No. 2 was further informed that the Order of the Hon'ble SAT in the matter of *Chanda Kochar v. SEBI,* is specific to the facts of that case and not applicable in the instant matter. As per settled law, all the relied upon documents were provided to the Noticee No.2 and there is no exclusion of any relevant documents from him. His apprehension that the KSSL might state against him and resignation letter of Noticee No.4 might be used against him is totally misplaced. In this matter the replies of all Noticees are being dealt with on merits with regard to allegations only qua them. The resignation letter of Noticee No. 4 has not been used against Noticee No. 2 in the instant proceedings. Hence, his assumptions and apprehensions are misplaced and principles of natural justice has been duly complied with in this case.

Cross examination of Noticed No. 5 and 6:

11. Noticee No. 2 had also sought to cross examine Noticee No. 5 and 6 citing reasons that SEBI had relied on their submissions for issuance of SCN dated October 16, 2024. As the statements/submissions of Noticee No. 5 and 6 are not relied in the SCN against Noticee No2 , this request was also found to be untenable and was rejected during the proceedings. It is pertinent to mention that the allegation in the SCN against the Noticee no.2 is based on the materials available on record for issuance of NCDs by KSSL when Noticee No. 2 was the Director and admittedly managing the affairs of KSSL during the relevant time. Noticee No. 5 and 6 were not part of the management of KSSL during the year 2017.

Non- Joinder of Karvy (the allottee) and Catalyst Trusteeship Services Limited (the Debenture Trustee):

12. According to Noticee No.2 due to non-joinder of the above key parties the SCN is rendered ultra *vires* and bad in law and is unenforceable. He has relied upon SEBI's order dated April 27, 2022 in the matter of *Vaishno Devi Dairy Products Limited* in support of this contention. Here, it is worthwhile to note that section 42(7) of the Companies Act, 2013 expressly prohibits issuers from utilising distribution channels or agents in aid of making their private placements. Thus, KSSL and in turn Noticee No. 2 who was in charge of its affairs and admittedly actively involved in its fund raising by issuing impugned NCDs to Karvy, it was their primary liability to exercise due diligence. Noticee No. 2 cannot escape liability if other players are not made party, though this ground of consistency in approach of SEBI could be considered as a mitigating factor.

Involvment of Sudhir Valia and his non- joinder:

13. Noticee No. 2 has contended that Mr. Sudhir Valia was actively involved with the day-to-day operations of the business of KSSL leading to restructuring negotiation with Karvy. The non-inclusion of Mr. Sudhir Valia as a party to the present proceedings has rendered the present proceedings as illegal and non-binding. It is noted that on the receipt of the complaint of Noticee No.2, the investigation in the matter was initiated with respect to the potential violation of the public issue norms prescribed under the SEBI Act, Companies Act, 2013 and the ILDS Regulations. Accordingly, the scope of the investigation included examination of the persons in charge of affairs of the KSSL as per its records. SEBI observed that the relevant documents with respect to raising funds through issuance of NCDs were

signed by Noticee No. 2 and 4 who were primarily responsible for issuance of NCDs. Noticee No. 3 was one of the promoter and director of KSSL during the relevant time. I note that as regards the involvement of Sudhir Valia, the investigation has found that: "*With respect to issuance of NCDs in concern, no direct role of Sudhir Valia and Dilip Sangvi Group, observed other than their role and responsibility as the majority shareholders of KSSL.*"

14. Having dealt with the preliminary objections, I now proceed to deal with the merits of the allegation. It is settled law that the SCN should be specific about provisions of the law alleged to have been violated and the basis thereof. In this case, the SCN narrated the facts with reference to provisions of the Companies Act, 2013 and in its para 12 only alleges that KSSL did not issue "*any application form with abridged prospectus and it did not make any application to stock exchanges for the listing of NCDs issued. It is therefore alleged that KSSL has violated the following provisions of ILDS Regulations, viz.*

    (i) Regulation 4(3)- Appointment of merchant banker registered with the Board
    (ii) Regulation 5 – Disclosure in the Offer Document
    (iii) Regulation 6 – Filing of draft Offer Document
    (iv) Regulation 7 – Mode of disclosure of Offer Document
    (v) Regulation 8 – Advertisements for Public Issues
    (vi) Regulation 9 – Abridged Prospectus and application forms
    (vii) Regulation 19(1) – Mandatory Listing
    (viii) Regulation 26 – Obligations of the Issuer, etc."

The SCN then abruptly states, in para 13, that the *"The relevant provisions alleged to have been violated by the Noticees are reproduced as under:*

"Companies Act, 2013

I. Section 2(60) of Companies Act, 2013

(60) "officer who is in default", for the purpose of any provision in this Act which enacts that an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise, means any of the following officers of a company, namely :—

(i) whole-time director;

(ii) key managerial personnel;

(iii) where there is no key managerial personnel, such director or directors as specified by the Board in this behalf and who has or have given his or their consent in writing to the Board to such specification, or all the directors, if no director is so specified;

(iv) any person who, under the immediate authority of the Board or any key managerial personnel, is charged with any responsibility including maintenance, filing or distribution of accounts or records, authorises, actively participates in, knowingly permits, or knowingly fails to take active steps to prevent, any default;

(v) any person in accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act, other than a person who gives advice to the Board in a professional capacity;

(vi) every director, in respect of a contravention of any of the provisions of this Act, who is aware of such contravention by virtue of the receipt by him of any proceedings of the Board or participation in such proceedings without objecting to the same, or where such contravention had taken place with his consent or connivance;

(vii) in respect of the issue or transfer of any shares of a company, the share transfer agents, registrars and merchant bankers to the issue or transfer;

II. Section 2(70) of Companies Act, 2013

(70) —'prospectus' means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of body corporate;

III. Section 23 of Companies Act, 2013

23. ***Public offer and private placement.*** *— (1) A public company may issue securities—*

(a) to public through prospectus (herein referred to as "public offer") by complying with the provisions of this Part; or

(b) through private placement by complying with the provisions of Part II of this Chapter; or

(c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made thereunder.

(2) A private company may issue securities— (a) by way of rights issue or bonus issue in accordance with the provisions of this Act; or (b) through private placement by complying with the provisions of Part II of this Chapter.

Explanation. — For the purposes of this Chapter, "public offer" includes initial public offer or further public offer of securities to the public by a company, or an offer for sale of securities to the public by an existing shareholder, through issue of a prospectus.

IV. Section 25 of Companies Act, 2013

***25. Document containing offer of securities for sale to be deemed prospectus**.—*

(1) Where a company allots or agrees to allot any securities of the company with a view to all or any of those securities being offered for sale to the public, any document by which the offer for sale to the public is made shall, for all purposes, be deemed to be a prospectus issued by the company; and all enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from, prospectus, or otherwise relating to prospectus, shall apply with the modifications specified in subsections (3) and (4) and shall have effect accordingly, as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities, but without prejudice to the liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof.

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown— (a) that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or…

V. Section 26 of Companies Act, 2013

26. Matters to be stated in prospectus. — (*1) Every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall, state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:*

Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992 (15 of 1992), in respect of such financial information or reports on financial information shall apply; —

……..

VI. Section 33 of Companies Act, 2013

33. Issue of application forms for securities.— (1) No form of application ***for the purchase of*** *any of the securities of a company shall be issued unless such form is accompanied by an abridged prospectus:*

Provided that nothing in this sub-section shall apply if it is shown that the form of application was issued—

(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or

(b) in relation to securities which were not offered to the public.

……..”

VII. Section 40 of Companies Act, 2013

40. Securities to be dealt with in stock exchanges*. —*

(1) Every company making public offer shall, before making such offer, make an application to one or more recognised stock exchange or exchanges and obtain permission for the securities to be dealt with in such stock exchange or exchanges.

(2) Where a prospectus states that an application under sub-section (1) has been made, such prospectus shall also state the name or names of the stock exchange in which the securities shall be dealt with.

(3) All monies received on application from the public for subscription to the securities shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—

(a) for adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus; or

(b) for the repayment of monies within the time specified by the Securities and Exchange Board, received from applicants in pursuance of the prospectus, where the company is for any other reason unable to allot securities.

(4) Any condition purporting to require or bind any applicant for securities to waive compliance with any of the requirements of this section shall be void.

(5) If a default is made in complying with the provisions of this section, the company shall be punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees.

(6) A company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed.

VIII. Section 42 of Companies Act, 2013 read with rule 14(2) of Companies (Prospectus and Allotment of Securities) Rules, 2014 reads as under:

42. Issue of shares on private placement basis. — (*1) A company may, subject to the provisions of this section, make a private placement of securities.*

(2) A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed fifty or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such conditions as may be prescribed.

(3) A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons,

whose names and addresses are recorded by the company in such manner as may be prescribed:

Provided that the private placement offer and application shall not carry any right of renunciation.

Explanation I.—"private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

Explanation II.—"qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992, (15 of 1992).

Explanation III.—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.

(4) Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash: Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8).

(5) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company: Provided that, subject to the maximum number of identified persons under sub-section (2), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.

(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day: Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than— (a) for adjustment against allotment of securities; or (b) for the repayment of monies where the company is unable to allot securities.

(7) No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.

(8) A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.

(9) If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.

(10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.

(11) Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall be applicable.]

Rule 14(2) of Companies (Share Capital and Debentures) Rules, 2014 reads as under:

(*2) For the purpose of sub-section (2) of section 42, an offer or invitation to subscribe securities under private placement* *shall not be made to* *persons more than two hundred in the aggregate in a financial year:*

Provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of clause (b) of sub-section (1) of section 62 shall not be considered while calculating the limit of two hundred persons.

Explanation. - For the purposes of this sub-rule it is hereby clarified that the restrictions aforesaid would be reckoned individually for each kind of security that is equity share, preference share or debenture.

IX. Issue and Listing of Debt Securities (ILDS), Regulation, 2008:

The following provisions of ILDS Regulations:

(i) Regulation 4(3)- Appointment of merchant banker registered with the Board
(ii) Regulation 5 – Disclosure in the Offer Document
(iii) Regulation 6 – Filing of draft Offer Document
(iv) Regulation 7 – Mode of disclosure of Offer Document
(v) Regulation 8 – Advertisements for Public Issues
(vi) Regulation 9 – Abridged Prospectus and application forms
(vii) Regulation 19(1) – Mandatory Listing
(viii) Regulation 26 – Obligations of the Issuer, etc."

15. The SCN is not specific with regard to the charge on violation of specific provisions of law which SEBI has power to enforce. It is pertinent to mention that sections 2(60) and 2(70) of the Companies Act, 2013 which define the expressions *"officer in default"* and "*prospectus*", respectively are in the definition clause under the Companies Act, 2013 and

do not cast any obligation which may result in contravention in themselves. Although different sections of the Companies Act, 2013 as quoted above, use different nomenclatures and terminologies in the context of 'public offer' of securities, they are meant for offer or invitation to subscribe or issue of securities, allotment or agreement to allot securities and offer for sale of securities to public, such as: -

> ***Section 2(70)-*** *'inviting offers from the public for the subscription or purchase of any securities of body corporate'*
>
> ***Section 25- '****allots or agrees to allot any securities'*
>
> ***Section 33-*** *Application form '**for the purchase of** any of the securities'*
>
> ***Section 42-*** *'offer or invitation to subscribe or issue of securities';*

16. Section 23 of the Companies Act, 2013 is an enabling provision and does not create any mandatory obligations for a company. In the facts and circumstances of this case, only section 23(1) is relevant as section 23(2) and the Explanation attached with it but applied to entire Chapter is not applicable. The SCN is therefore flawed to this extent. Section 23(1) *inter alia* enables a public company to issue securities: -
    (a) through public offer – to public to public through prospectus by complying with provisions of Part I of Chapter III; or
    (b) through private placement by complying with the provisions of Part II of Chapter III; or
    (c) through a rights issue or a bonus issue in accordance with the provisions of this Act and in case of a listed company or a company which intends to get its securities listed also with the provisions of the SEBI Act and the rules and regulations made thereunder.

17. The above section 23 again does not create mandatory obligation which can be charged for alleged violation of the said provisions and directs towards compliance obligation elsewhere in Part I for public issue or Part II for rights issue, as the case may be. Further, when seen with text of this section, the SEBI Act and the rules and regulations made thereunder are extended only with regard to the rights issue and bonus issue by a listed company or a company which intends to get its securities listed. However, the contextual application comes from section 24 which extends SEBI's authority to administer, by regulations, the provisions of this Chapter III in so far as it relates to issue and transfer of securities and non-

payment of dividend by listed companies and those companies which intend to get its securities listed. The SCN is completely silent about reference to this pertinent section 24.

18. Section 25(1) of the Companies Act, 2013 deals with the concept of a "*deemed prospectus,"* essentially treating certain documents offering securities for sale to the public as if they were formal prospectuses. As per this provision, if a company '*allots or agrees to allot'* any of its securities *with a view to* all or any of those securities being offered for sale to the public, the document by which the offer for sale to the public is made shall, ***for all purposes***, deemed to be prospectus issued by the Company and consequently all provisions relating to prospectus shall apply and shall have effect accordingly.

19. Section 25(2) which is incomplete in its text provides for an explanation for entire Companies Act, 2013 and creates two rebuttable presumptions in favour of question of fact that the securities were allotted *with a view to* all or any of those securities being offered for sale to the public. One of them, as relevant for this case, is that (unless the contrary is proved) if it is shown that an offer, of the securities allotted or of any of them, for sale to *the public* was made within six months after the allotment or agreement to allot, it is presumed that the allotment or an agreement to allot the securities was made with a view to the securities being offered to the public and the document whereby the offer for sale is made shall be deemed to be a prospectus under section 25(1).This section 25 again is rule of interpretation and construction and declares a deeming fiction and rebuttable presumptions. The word *"public"* has not been defined for the purposes of this section 25(1) and 25 (2)(a) in the Companies Act,2013 or the 2014 Rules. Further, as per text of this section, the numbers of initial allottees and subsequent purchasers have not been provided in this section.

20. Section 42 of the Companies Act, 2013 that falls in Part II[1] of Chapter III of the Companies Act, 2013 deals with private placement of securities by the Companies. Section 42(1) is an enabling provision. Sub- section (2) of Section 42, *inter alia*, declares that a '*private placement'* –
    (a) shall be made only to *a select group of persons* who have been identified by the Board of Directors, and

[1] *Only section in Part II*

(b) whose number shall not exceed the number of offerees beyond fifty or such higher number as may be prescribed, in a financial year.

Thus, if a company which intends to make a *private placement,* cannot offer or invite to subscribe or issue of its securities to persons more than the prescribed number.

21. Sub- section (3) of section 42 provides for requirements of placement offer and application to be in prescribed manner. Explanations added after sub-section (3) seem to apply to whole section 42 although they are placed under sub-section (3) and before sub-section (4). Explanation I defines "*private placement"* to mean any offer of securities or invitation to subscribe securities to a *'select group of persons'* by a company through issue of a private placement offer letter and which satisfies the conditions specified in section 42. Explanation II defines "*qualified institutional buyers."* Explanation III defines '*deemed offer to public'* as under:

> "*If a company, listed or unlisted, <u>makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons,</u> whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public <u>and shall accordingly be governed by the provisions of Part I of this Chapter."</u>*

22. For the purposes of section 42, Rule 14(2) of the 2014 Rules, prescribes that an offer or invitation to subscribe securities under *private placement* shall not be made to more than two hundred persons in the aggregate in a financial year. The Explanation I to section 42(3) makes it very clear that the process of *"private placement"* covers:

- *an offer to allot, or*
- *invitation to subscribe, or*
- *allotment or*
- *agreement to allot*

securities to a select group of persons identified by the board of the company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in the section. Section 25(2) is applicable to all relevant sections of the Companies Act, 2013. The scheme of section 25(2) of the Companies Act, 2013 is not

inhibited by any number. Provisions of section 42 read with 2014 Rules requires the company to adhere to the limit of 200 persons not just with respect to the number of persons i.e. 200 to whom an offer or invitation to subscribe or allotment of the securities of the company but all with respect to agreement to allot ultimately. Thus, *an offer or invitation to subscribe or allotment or agreement* to ultimately allot securities to less than 200 persons in the aggregate in a financial year is *sine qua non* to treat it a private placement.

23. Section 42(11) which starts with non obstante terms declares that *'Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 (42 of 1956) and the Securities and Exchange Board of India Act, 1992 (15 of 1992) shall be applicable.'* This provisions reinforces SEBI's powers under the SEBI Act. This sub-section has been relied upon in the SCN and makes it valid exercise of power.

24. The obligations of companies within jurisdiction of SEBI and its power flow from sections 24, 26, 33, 40, 42(11), etc. of the Companies Act,2013 and Regulations made by SEBI under SEBI Act. Since SCN alleges violations of provisions of Section 26(1), 26(4), 33(1), 40(1), 40(2) of the Companies Act 2013 and Regulation 4(3), Regulation 5, 6, 7, 8, 9,19(1) and 26 of the ILDS Regulations also it does not suffer from infirmity and can be proceeded using principle of severalty. Here, I can't lose sight of purpose, object and intendment of sections 23, 24 and 25 of the Companies Act, 2013 relating to prospectus/offer documents in case of public offer, subscription or allotment or sale to public in terms of section 25(2)(a) read with section 25(1) of the Companies Act, 2013. All these sections intend to ensure transparency and investor protection by requiring issuance of offer documents to contain the disclosures by issuing prospectus in terms of section 26, comply requirements relating to application form and abridged prospectus under section 33 and list the securities in accordance with section 40 of the Companies Act, 2013 and also comply with the provisions of SEBI Act and Regulations in following cases: -

    (a) Public offer by issuance of prospectus [section 23(1)];
    (b) Issuance of the document by the company to *allot* its securities *<u>with a view</u> to* all or any of those securities being offered for sale to the public [section 25(1)];

(c) (unless contrary is proved) an *allotment of* securities or agreement to allot securities then securities being offered for sale to the public

(i) within six months after the (date of) allotment [Section 25(2)(a)]; or

(ii) that the date when offer was made, the whole consideration to be received by the company had not been received; [Section 25(2)(b)]

(d) An *offer to allot or invitation to subscribe or allotment or agreement to allot securities* to more than 200 persons in the aggregate in a financial year. [Section 42 (2) read with Explanation III to section 42(3) and Rule 14 of the 2014 Rules].

25. The Noticees have contended that KSSL had made '*private placement'* of NCDs strictly to one allottee i.e. Karvy, within the framework of private placement of securities as per the provisions of section 42 of the Companies Act, 2013 and 2014 Rules. But Noticees No 2 and 3 have taken a contrarian stand also. On the one hand their claim is that the allotment of NCDs was made by KSSL to Karvy on *private placement* basis in compliance of section 42 of the Companies Act, 2013 and 2014 Rules but on the other hand they have argued that the said section does not apply to this case since for the applicability of Section 42 the offer or invitation must be made to a *"select group of persons*." According to their contrary contention, the use of the word "*group*" implies that the offer should be made to more than one person — an offer to a single person does not attract the provision of this section. In my view, the expression *"select group of persons"* generally refers to a pre-determined or identified set of individual/s, rather than the general public. In my view, the expression *"select group of persons"* cannot be read in isolation. When seen in the whole scheme of relevant sections of the Companies Act, 2013, 2014 Rules and provisions of SEBI Regulations which are intended for ensuring market integrity, market deployment with a level playing field and investor protection as discussed above, this expression signifies a targeted identified audience for offers, invitations, or allotment etc., on one to one basis to less than 200 persons and does not permit public distribution in contravention of provisions of section 25(1) and 25 (2)(a) of the Companies Act, 2013.

26. It is pertinent to mention that the technicalities of language cannot be allowed to defeat the whole equalising principles under the Companies Act,2013 and SEBI Regulations which aim at ensuring integrity of public issues and in transparency for investor protection by prescribing the number for treating a private placement as public issue under section 42 or

deeming a document whereby securities are allotted then offered for sale to the public, to be prospectus in terms of section 25(2)(a) read with section 25(1) of the Companies Act. Since 2014, these principles have become a founding faith and "*a way of life".* The law enshrined in the sections 23, 24, 25 ,26, 40 and 42 of the Companies Act, 2014 and ILDS Regulations are based on principle of equality of economic and social justice. They must not be subjected to a narrow pedantic or lexicographic approach. The principles so enunciated cannot be cribbed, cabined and confined within traditional and doctrinaire limits.

27. It is noted that, in this case;

(a) **On July 28, 2017,** the Board of Directors of KSSL had passed a resolution to issue and offer up to 75,00,00,000 secured redeemable taxable NCDs to be made on a '*private placement'* basis, under section 42 of the Companies Act read with 2014 Rules, on such terms and conditions as specified in draft private placement offer letter to Karvy.

(b) **On August 07, 2017,** the shareholders of KSSL in its Annual General Meeting held approved the resolution to issue 75,00,00,000 NCDs of Rs. 1 each aggregating to Rs. 75,00,00,000 on private placement basis under section 42 and 71 of the Companies Act, 2013 on such terms and consideration as specified in private placement offer letter to be circulated to Karvy or any of its associate companies or nominees.

(c) **On August 7, 2017** an offer letter in the prescribed Form PAS-4 was made for *private placement* as per the Companies Act, 2013 read with Rule 14 of the 2014 was circulated to Karvy.

(d) On August 8, 2017, Karvy, vide the application From for *private placement* agreed to accept the NCDs mentioned in the Form PAS-4. In the application form, Karvy has *inter alia* authorized KSSL to place its name on the register of debenture holders of KSSL.

(e) Accordingly, the 75,00,00,000 NCDs (ISIN- INE463Y07019) were issued to '*Karvy Capital Limited - A/c Demeter Portfolio'* in four tranches (during August –October 2017) in the financial year 2017-2018 for raising Rs. 75,00,00,000 from Karvy.

(f) **On October 10, 2017,** Form PAS-5 as required under Rule 14(3) of the 2014 Rules was filed with Registrar of Companies, after last tranche of allotment of NCDs to Karvy.

28. On the first blush it is seen that the allotment to Karvy in this case was on *"private placement"* basis in terms of Section 42(2) read with 2014 Rules. However, when the facts are examined holistically, it is seen that, admittedly, in this case NCDs were allotted to Karvy and then transferred to 699 persons through off market transfers (Benpos Date January 26, 2018) within 6 months from the date of allotment. KSSL has contended that it was not involved in subsequent distribution of NCDs to over 600 persons and it was an independent action of Karvy with no direction or influence from KSSL. In my view, the intent or design could be gathered or inferred from the conduct/ deeds of the parties involved. *The maxim 'acta exterior indicant interior secreta'* (external action reveals inner secrets) applies with all force in such cases. The expression *"with a view to"* in section 25 indicates the reason or goal behind an action. It signifies the action being taken with a specific objective in mind and implies a forward-looking perspective, suggesting that the action is a means to an end. It is pertinent to mention that such intent, design or reason can be drawn from a mass of factual details and can be gleaned from the whole gamut of surrounding foundational facts and circumstances both poste and *ante* the typical gambit of allotment in this case.

29. It is relevant to note that in this case,
    (a) As per Form PAS-4 Rs. 75,00,00,000/- was proposed to be transferred to KSSL's HDFC Bank Account No. 57500000058625 on 3 Tranches (Tranch 1- Rs. 52,00,00,000/- Tranch 2 – 12,50,00,000/- and Tranch 3 – Rs. 10,50,00,000/-) where each tranch would be of 5 series.
    (b) KSSL allotted 75,00,00,000 NCDs (ISIN- INE463Y07019) in '*Karvy Capital Limited - A/c Demeter Portfolio'* in four tranches (during August –October 2017)
    (c) As per Benpos dated on January 26, 2018 the said debentures were held by 699 persons.

30. In this case, Karvy, being '*Debenture Holder Representative'* was acting on the basis of power of attorney executed by the Debenture Holder(s). Milestone Trusteeship Services Pvt. Ltd. (now amalgamated with Catalyst Trusteeship Limited) was appointed as the Debenture Trustee. At page 1 of Form PAS-4 for issuance of NCDs to Karvy, it is specified that the

issue of NCDs shall be subject to the provisions of the Companies Act, 2013, the rules notified pursuant to the said Act, the memorandum and Articles of Association of the KSSL, the application form, and other terms and conditions as may be incorporated in the Debenture Trust Deed dated August 7, 2017.

31. It is noted that the Debenture Trust Deed, had been entered between KSSL and Milestone Trusteeship Services Pvt. Ltd., as the "Debenture Trustee" before the allotment was made. In the said Debenture Trust Deed, under the *'definitions and meaning'* clause, Karvy has been defined as the '*Debenture Holder Representative'* acting on the basis of valid power of attorney executed by the Debenture Holder(s) in the favour of *Karvy Capital Account Demeter Portfolio* or any other entity or person as may be appointed as *Debenture Holder Representative* by the Debenture Holder (s) from time to time. Further, the *"Debenture Holder"* is defined as *eligible investors* who are the person and/or persons who are the subscribers to the debentures, and their successors and assigns from time to time, each of whom fulfil the following requirements:

(i) Persons who are registered as the beneficial owners in the register of beneficial owners; and
(ii) Persons who are registered as debenture holders in the register of debenture holders;

(and shall include registered transferees of the debentures from time to time with the company and the depository) and in the event of any inconsistency between sub paragraph (i) and (ii) above, sub paragraph (i) shall prevail;

32. Further, in accordance with the terms of the Debenture Trust Deed, there was obligation to list the NCDs within 15 days if Karvy makes request for the listing of the NCDs.

33. It is also noted that at the time of issuance of NCDs, KSSL had also accepted and agreed upon the 'Indicative Term Sheet' made by Karvy, specifying the terms and conditions of issuance of NCDs. The Indicative Term Sheet *inter alia* provided the following: -

Borrower/Issuer/Company	Katalyst Software Services Private Limited
Investor(s)/Debenture Holders	Karvy Capital Limited – A/c Demeter Portfolio
Debenture Trustee	Milestone Trusteeship Services Pvt. Ltd

Debenture Holder Representative (DHR)	**Karvy Capital Limited**
Type of Instrument	Secured, Redeemable, Taxable Non-Convertible Debentures ("NCDs" or "Debentures")
Mode of Issue	Private placement in Demat form
Eligible Investors	**As permitted under applicable law**

34. In the above Indicative Term Sheet, the *'investor/debenture holder'* is not an identified individual or an entity but a depository account of '*Karvy Capital Limited – A/c Demeter Portfolio'*. In the said Terms Sheet there is a clear denotation of Karvy being the representative of the debenture holders and not as the *'eligible investors'* of the NCDs. The allotment of NCDs by KSSL was with a view to allot them to *'Eligible Investors - as permitted under applicable law'*.

35. I, therefore, find that while the terms used in the board resolutions for issuance of NCDs and the PAS-4 indicated the issuance to be a *private placement* as per Section 42 of the Companies Act, 2013, the provisions in the Debenture Trust Deed and Indicative Term Sheet which set out the key terms upon which the debentures were proposed to be issued envisioned subsequent transfer or secondary offer of NCDs to the public. This implies that the ultimate debenture holders were never pre-identified and the NCDs were transferred to the account of Karvy Demeter A/c to make the same available to the public at a later date. Karvy was never intended to be the debenture holder or the beneficial owner of the NCDs, but a representative acting on the basis of power of attorney of the ultimate debenture holders. KSSL and Noticee No.2 were aware of the fact that Karvy was subscribing to NCDs on behalf of other debenture holders. Otherwise, there is no reason for allotting the NCDs in a portfolio demat account of Karvy. Such offering of NCDs for public subscription through Karvy falls foul of the fundamental distinction between public offer and private placements laid down in the Companies Act, 2013. The above terms of the Debenture Trust Deed and Indicative Term Sheet show that the NCDs were allotted to Karvy '*with a view'* to the NCDs being offered for sale to the public as provided in section 25(1) of the Companies Act, 2013.

36. Once the NCDs were issued and credited in dematerialised form to the depository account of Karvy, they become freely transferable through off market trades. Relying upon order of

Hon'ble SAT in ***Avenue Supermarts Limited v. SEBI (***dated 17.01.2022) KSSL has contended that it became aware of the change in beneficial ownership of the NCDs only through the BENPOS statements provided by the NSDL through RTA, which was much later after the transactions had been registered by the Depository. Further, the subsequent transfer or offer made by Karvy must be attributed solely to Karvy as the initiating party of such secondary offer, which seemingly has occurred through an off-market trade executed by the registered holder. I have perused the above order of Hon'ble SAT in ***Avenue Supermarts Limited*** and note that the observations made therein are with reference to date of trigger of the disclosure obligations under the SEBI (Prohibition of Insider Trading) Regulations, 2015. That case was, related to disclosure related violation by the company wherein Hon'ble SAT was of the opinion that it was not practical for the company to scan the BENPOS report for the purpose of making a possible disclosure under the Regulations and hence was of the view that reliance on BENPOS report was found to be erroneous. The said observations are not applicable to the facts of the case as Noticee No.1 and 2 were actively involved in allotment of NCDs based on terms and conditions spelt out in the PAS-4, Debenture Trust Deed and Indicative Term Sheet.

37. In this context, it is relevant to refer to a letter decision of Hon'ble SAT in the matter of ***Man Industries (India) Ltd. vs SEBI*** (Appeal No. 95 of 2020) dated 08.04.2022, wherein while referring to the decision in the matter of ***Avenue Supermarkets Limited***, it has been held that the company could get relevant information from other sources apart from BENPOS and accordingly the appeal was dismissed. In the instant case, admittedly, KSSL was aware that the NCDs were ultimately meant for public investors. The issue and allotment of impugned NCDs by KSSL was intended, since inception, to be allotted/sold to public and not exclusively to Karvy as contended by the Noticees.

38. Noticee No.2 has also submitted that Karvy being the '*Debenture Holder Representative'* did not mean that Karvy could perform an act which would be in violation of provisions of public issue norms and that Karvy had not disclosed to the board that they intended to transfer the NCDs to public. It is pertinent to mention here that KSSL was a party to the Debenture Trust Deed which was signed by Noticee No. 2 and Noticee No.4. Further the Indicative Term Sheet given by Karvy was signed and accepted by Noticee No. 2 for KSSL. Hence, they cannot feign ignorance of the act of Karvy as contended by them. I find that at

the time of signing of the Debenture Trust Deed and the 'Indicative Term Sheet' made by Karvy, the Noticee No.2 was under notice of Karvy's stratagem that the debentures would subsequently be transferred to *'Eligible Investors - as permitted under applicable law.'* It was duty of Noticee No. 2 being the promoter director of KSSL and actively involved in allotment of NCDs to Karvy with pre-planed strategy to down sell the NCDs to *"eligible investors"* who were not identified and disclosed at the time of allotment, to exercise his fiduciary duties towards KSSL with utmost diligence and not fall prey to any activity of Sudhir Valia as contended by him or of Karvy who actively had designed the terms and conditions of down- selling of NCDs to public.

39. The intent of Karvy to down sell the NCDs allotted to it was visible from Debenture Trust Deed and Indicative Term Sheet signed by Noticee No.2 for KSSL. I find that the unlisted NCDs were allotted in this case in the garb of a private placement basis, as outlined in the offer letter (PAS-4) but were designed for sale to unidentified transferees. The argument that the allotment was made only to Karvy does not hold any merit as the restriction under section 25(2)(a) by itself has been flouted by the KSSL and Karvy. I, therefore, do not agree with contentions of the Noticees that allotment of NCDs by KSSL cannot be termed as a deemed public issue.

40. Although the SCN alleges that *KSSL 'had not issued any prospectus or circulate any application forms <u>as the allotment was done on Private Placement basis</u> and did not make any application to the recognised stock exchanges for listing of its above NCDs',* as found hereinabove, in the facts and circumstances of this case, the allotment of NCDs meets all the characteristics of the presumptions of a public issue in terms of section 25 (1) read with section 25(2)(a) of the Companies Act, 2013. The subsequent down-selling of these unlisted NCDs to the public squarely falls within rebuttable presumption under section 25(2)(a) of the Companies Act, 2013. The Noticees have failed to rebut the presumption of deemed public issue as contemplated in said section 25(2)(a). The allotment of NCDs and subsequent transfer of NCDs in the instant case was a predetermined scheme and combined strategy with active role and involvement of Karvy but with due knowledge of Noticee No. 2. In this case, neither the 'prospectus' in terms of Section 26 nor the application from accompanied by abridged prospectus in terms of section 33 were issued. The application for

listing of NCDs on recognised stock exchanges was not made either. The allotment of NCDs in this case was also in violation of following provisions of the ILDS Regulations *viz;-*

Regulation 4(3)- Appointment of merchant banker registered with the Board
Regulation 5 – Disclosure in the Offer Document
Regulation 6 – Filing of draft Offer Document
Regulation 7 – Mode of disclosure of Offer Document
Regulation 8 – Advertisements for Public Issues
Regulation 9 – Abridged Prospectus and application forms
Regulation 19(1) – Mandatory Listing
Regulation 26 – Obligations of the Issuer, etc.

41. In view of the above, I find that the offer and allotment of NCDs in this case was in contravention of the provisions of Section 26(1), 26(4), 33(1) read with Section 2(70), 40(1), 40(2), 42(2), of the Companies Act 2013 and Regulation 4(3), Regulation 5, 6, 7, 8, 9,19(1) and 26 of the ILDS Regulations. The case thus, squarely falls within the ambit of SEBI's jurisdiction conferred by sections 24(2) read with section 42(11) of the Companies Act, 2013 which incorporates by reference SEBI's powers and authority under sub-sections (1), (2A), (3) and (4) of section 11, sections 11A, 11B and 11D of the SEBI Act.

Who are Responsible/liable in this case.

42. The violations in this case fall within the jurisdiction of Central Government as well as SEBI.

43. Noticee No. 1 KSSL being the company in question is clearly responsible for non-compliances in this case.

44. Noticee No. 2 was promoter/director and had signed the PAS-4, debenture trust deed and the indicative term sheet. He cannot escape responsibility in terms of section 27 of the SEBI Act. Noticee No. 3 became subscriber to the Memorandum and Articles of Association of KSSL along with Noticee No.2 since he is foreign citizen. However, she had no role to play in day to day management and affairs of KSSL and in the matter of allotment of NCDs by

KSSL. Therefore, no liability can be fastened upon her as exception in section 27 of SEBI Act applies in her case.

45. Noticee No. 4 was an independent director. Here, reference is drawn to the Ministry of Corporate Affairs (**MCA**) General Circular No. 1/2020 dated March 2, 2020 on the initiation of prosecution or internal adjudication proceedings against independent directors and non-executive directors (who are not promoters or key managerial personnel ('KMP') of a company). The Circular reiterates the position provided under Section 149(12) of the Companies Act, 2013 that the liability of independent directors or non-executive directors (not being promoters or KMPs) is limited to: (a) acts, omissions, and commissions by a company which occurred with his/her consent or connivance; and (b) instances where he/she failed to act diligently. The circular provides certain procedural safeguards against initiation of proceedings against such directors, such as: (a) Ordinarily, whole-time directors or KMPs (associated with day-to-day functioning of a company), are liable for defaults committed by the company. In their absence, director(s) who have expressly given their consent for incurring liability for maintenance may be held liable; and (b) Civil or criminal proceedings must not be initiated against independent directors or non-executive directors, without sufficient evidence of their involvement in lapses of decisions of the board or its committees.

46. Noticee No. 4 has also enclosed a copy of an affidavit filed by KSSL before the National Company Law Tribunal, Mumbai Bench (NCLT) wherein the following statement has been made on oath regarding his directorship - *"...Due to the poor management of KSSL, led by him (Mr. Rahul Shah), Mr. Nishant K Upadhyay (Non-Executive Independent Director) was compelled to submit his resignation vide letter dated 30.3.2018..."*. Further, in the rejoinder affidavit of Mr Rahul Shah (Noticee No. 2) filed before the NCLT, the following reference is made with respect to Noticee No. 4 – *"...wrt resignation of Mr. Nishant Upadhyay (Non-Executive Independent Director), it would be apt and suffice to state that, Mr. Nishant Upadhyay was not involved with management and day to day affairs of the petitioner company..."*. I note that the scheme of arrangement between KSSL and Nova Techset Limited is *sub-judice* before NCLT in the instant matter. I note that Noticee No.4 was the Non-Executive Independent Director of KSSL in June 2017, he was however not involved in the day to day activities, control and management of KSSL and had resigned on

30.3.2018. KSSL and Noticee No. 2 have confirmed his submissions. Hence, he cannot be held liable merely because of signing the Indicative Term Sheet alongwith Noticee No. 2.

47. Noticee No. 6, 7, and 8 were appointed as directors of KSSL with effect from May 31, 2021 and Noticee No. 5, was appointed as its director on February 7, 2022. Thus, the Noticee No. 5,6,7 and 8 are not responsible for the acts and omissions of Noticee No.1 and 2 as found in this case. However, if any obligation of Noticee No.1 is established and directed for compliance by virtue of this order, Noticees No. 5,6,7 and 8, being the present directors of KSSL, shall be vicariously responsible to ensure compliance and will be liable for any non-compliance of directions, if any.

48. Noticee 2 has submitted that the standard of "*mens rea"* or guilty mind is a fundamental threshold for establishing personal liability, particularly in quasi-criminal or regulatory offences under corporate law, and it is entirely absent in the facts presented here. In this regard, it is settled position that the proceeding under SEBI Act and Regulations are civil in nature and not penal in character. No requirement of establishment of '*mens rea'* would be applicable to these proceedings. Besides, as regards liability of directors for violation of a statutory provision, the same would depend on the person's role in the company's affairs and not on the basis of '*mens rea'*.

49. Noticee No.2 has contended that SCN is patently illegal and ultra vires the provisions of section 42(10) of the Companies Act, 2013. They have relied upon judgement of Hon'ble SAT in ***G Unnikrishnan Nair v. SEBI*** dated September 27, 2019, where it was held that the liability to refund the subscription money received in violation of provisions of section 42(10) of the Companies Act, 2013 is solely on the Company and the officer in default can only subject to monetary penalty. It is pertinent to note that Section 42(9) is the power of Central Government to impose penalty on the company, its promoters or directors in case default in filing return of allotment in a private placement. Section 42(10) *inter alia* provides for power of the Central Government to impose penalty upon a company or its promoters or directors if offer is made or money is accepted in contravention provisions of section 42. This sub- section (10) is subject to the provisions of sub-section (11) of section 42. Section 42(11) starts with a non obstante terms and empowers SEBI to take action under SEBI Act / Securities Contracts (Regulation) Act, 1956. This section 42(11) prevails over provisions of section 42(9) and 42(10).

50. The direction under SEBI Act as contemplated in this case are not limited by section 42(10) instead section 42(11) recognises and reinforces wide powers of SEBI in such matter under the SEBI Act. I, therefore, do not agree with contentions that SCN is *ultra vires* or bad in law. For the same reasons the contention that only KSSL can be proceeded for issuing direction in view of provisions of section 42(10) and 42(11) is also misplaced. I note that the Hon'ble SAT in the abovementioned matter of ***G Unnikrishnan*** (*Supra*) had held as following: -

> "7. *Admittedly, the appellant was appointed as an independent director and was not involved in the day to day affairs. Section 42(10) of the Companies Act, 2013 indicates that where the company makes an offer or accepts monies in contravention of this Section in that case the company and its promoters and directors shall be liable for penalty. The provision makes it apparently clear that the liability of director is only to the extent of penalty and not for the refund of the monies collected from the subscribers. The liability to refund the amount under Section 42(10) of the Companies Act, 2013 is fastened upon the company. Thus, the direction of the WTM directing the appellant to refund the money is wholly incorrect."*

51. It is noted that the scope of direction of refund under section 42(10) of the Companies Act, 2013 in that case was limited to the company and not to directors since SEBI had invoked provisions of said Section 42(10) and the judgement was delivered by Hon'ble SAT within the scope of the order against directors including independent director. In my view, scope of directions under SEBI Act are not limited by provisions of section 42(10) of the Companies Act, 2013. Provisions of Section 42(11) read with section 42(10) recognise overriding powers under the SEBI Act and SCRA.

52. Section 2(60) of the Companies Act, 2013 defines the terms "Officer who is in Default". Under Section 2(60) "*an officer of the company who is in default shall be liable to any penalty or punishment by way of imprisonment, fine or otherwise….*". Section 2(60) of the Act further defines an "*Officer who is in Default"* to include whole time director, key managerial personnel, such directors who has given their consent or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the Directors is or are accustomed to act, etc.

53. As regards the liability of directors the Hon'ble SAT in the matter of *Manoj Agarwal vs. SEBI* (Appeal no. 66 of 2016), decision dated July 14, 2017 held that –

"… Fact that appellant had merely lent his name to be a director of BREDL at the instance of Mr. Soumen Majumder and for becoming a director of BREDL the appellant had neither paid any subscription money to BREDL and the fact that the appellant was not involved in the day to day affairs of BREDL would not absolve the appellant from his obligation to refund the amount to the investors in view of the specific provisions contained in Section 73(2) read with Section 5 of the Companies Act, 1956. Admittedly, the appellant was a director of BREDL when amounts were collected by BREDL in contravention of the public issue norms and there is nothing on record to suggest that any particular officer/director was authorised to comply with the public issue norms. In such a case, all directors of BREDL including the appellant would be "officer in default" under Section 73(2) read with Section 5 of the Companies Act, 1956.…."

54. In *Pritha Bag vs. SEBI* (Appeal no. 291 of 2017), decision dated February 14, 2019, SAT held that –

"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)."

…This Tribunal held that in the absence of any finding that the appellant was entrusted to discharge his functions contained in Section 73 of the Companies Act and in the absence of any material to show that the said appellant was entrusted to discharge as an officer in default as set out in Clauses (a) to (c) of Section 5 of the Companies Act, the said appellant could not be penalized under Section 73(2) of the Companies Act. The said decision is squarely applicable in the instant case."

55. In *Sayanti Sen vs. SEBI* (Appeal no. 163 of 2018), SAT on August 09, 2019 held that –

"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."

56. In the matter of *Adi Cooper vs. SEBI* (Appeal No. 124 of 2019), SAT on November 5, 2019 held that the appellant who was a whole time director was neither directly or indirectly involved in any fraudulent activity nor employed any scheme to defraud any shareholder or investor and therefore cannot be held liable merely because he was party to a resolution of the Board of Directors.

57. From the MCA records, I note that Noticee No. 2 Mr. Rahul Shah was the Chairman and Director of KSSL from January 5, 2015 to January 13, 2022. On perusal of the offer letter PAS-4, Noticee No. 2 Mr. Rahul Shah is shown as holding the majority shareholding in KSSL (28.88%). Noticee No. 3 and 4 were not holding any shares in KSSL. I find that Noticee No. 2 was the signatory to the private placement Offer Letter PAS-4 and also to the Board Resolution dated July 28, 2017 resolving to issue and offer up to 75,00,00,000 secured redeemable NCDs to Karvy. Moreover, I find that a resolution dated July 28, 2017 to borrow monies in access of the aggregate of the paid up share capital and free reserved of the company, resolution for creation of charge, acquisition of Nova Techset Private Limited and approval of the limits for the loans and investment by KSSL in terms of the provisions of section 186 of the Companies Act, 2013 were solely signed by Noticee No. 2. Further, the 'Indicative Term Sheet' which outlined the terms and conditions of the issuance of NCDs was also accepted and agreed upon by Noticee No. 2 on behalf of KSSL. I find that the Debenture Trust Deed dated August 7, 2017 which set out the key terms upon which the debentures were proposed to be issued was also signed by Noticee No. 2.

58. Clause C of the third amendment to Debenture Trust Deed dated April 11, 2023 further reads as under:

C. Mr Rahul Shah was the promoter of the Company and enjoyed management rights and the Control of the Company. However, consequent to management and operational issues, Mr. Rahul Shah resigned as the whole time director and chairman of the board of the Company with effect from 28 January 2022, vide letter dated 12 January 2022. Instead of ensuring compliance with the repayment obligations of the Company and contrary to the provisions of the Debenture Trust Deed, he voluntarily relinquished the management and Control of the Company. The management and Control of the Company was thereafter assumed by the new management of the Company and it continues as on the date of this Amendment Deed. The board of the Company has been reconstituted and the new management has undertaken various steps for the revival of the business and operations of the Company and the Reference Entity.

59. From the materials available on record and from the submissions of Noticee No. 2, it can safely be concluded that the decision to issue NCDs, board resolution for the same and the consequent allotment was made when Noticee No. 2 was the person in-charge of the day-to- day management and operational issue of KSSL. Thus, considering the principle laid down by Hon'ble SAT with respect to liability of directors, it is clear that the violations happened with the knowledge, consent and connivance of Noticee No. 2 and he failed to act diligently. Noticee No. 2 is, thus, the officer in default in terms of section 2(60) of the Companies Act, 2013 and hence liable for directions under Sections 11(1), 11(4), 11A and 11B of the SEBI Act within the principle laid down in section 27 of the SEBI Act read with section 24 and section 42(11) of the Companies Act, 2013.

60. Interestingly, the instant case was taken up for examination by SEBI based on a complaint received from Noticee No. 2 himself. Noticee No. 2 has in his submission stated that SEBI ought to protect the whistle blower and not prosecute him. I find that as per the *"clean hands doctrine"* he who comes into equity must come with clean hands. Considering Noticee No. 2 was solely responsible for the management of the company at the time of the impugned issuance of NCDs, he cannot plead SEBI to act judiciously and protect his interest as a whistle blower. The observations of the Hon'ble Supreme Court of India in the matter of ***Shri N. Narayanan vs. SEBI***[(2013) 12 SCC 152] decided on

26.04.2013, are worth mentioning here. In that case Hon'ble Supreme Court aptly observed that -*"... Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence."*. I further note that even where a company is dissolved, the liabilities of the directors of the company still continue. In this regard, Section 248(7) of the Companies Act, 2013 provides that: *"The liability, if any, of every director, manager or other officer who was exercising any power of management, and of every member of the company dissolved under sub-section (5), shall continue and may be enforced as if the company had not been dissolved."* I therefore, do not agree with contentions of Noticee No.2 in this regard.

61. Noticee No. 2 has referred to an order by Registrar of Companies, Gwalior dated May 18, 2023 in the matter of Excel Vehicles Private Limited[2] wherein it was held that promoter and *'officer in default'* is liable for the acts of the company and not for the acts of third parties. From the preceding paragraphs, it is established that allotment of NCDs in the instant case was a predetermined scheme and a contemplated action wherein the primary allotment was made by KSSL to Karvy, who in turn, offered the securities to the public at large. This subsequent transfer or secondary transfer of securities was a coordinated scheme of allotment to the public at large which can be established from the Indicative Term Sheet accepted and agreed upon by Noticee No. 2 at the time of making issuance of NCDs and also the debenture trust deed. The argument of Noticee 2 is thus without any merit.

62. As brought out in SCN and replies of the Noticees, Karvy played an integral and critical role in the whole scheme of raising monies, issuance and allotment of NCDs and subsequent down-selling to public. Admittedly, Karvy and Milestone Trusteeship Services Pvt. Ltd (now amalgamated with Catalyst Trusteeship Limited) are not Noticees in the present proceedings and there is no material to suggest if SEBI has initiated any action against them separately or not. Karvy is a NBFC registered with RBI and also a SEBI registered Portfolio Manager. Karvy and Milestone being SEBI registered intermediaries were required to adhere to the rules and regulations as prescribed by SEBI and maintain a high degree of professionalism in the conduct of their business.

[2] ROC-G-ADJPEN/u/6 42(6)/Excel Vehicle/390-394

63. Down-selling of the NCDs cannot entirely be a unilateral and independent act without the involvement of other parties and the entire scheme could not have been possible without the connivance of the parties involved. It is unclear as to whether its subscription of NCDs issued by KSSL were accounted for as investments in the books of accounts of Karvy and funds invested from Karvy's own proprietary fund or that it had received funds from investors in advance. These aspects have been missing in the examination of SEBI.

64. I further, note that similar *modus operandi* of down-selling of adopted by Karvy NCDs after subscribing to them were adopted by Karvy in certain other matters where SEBI took enforcement actions against Karvy and the issuer and its directors with different approach.

65. In the matter of ***Utkarsh Small Finance Bank Limited*** (Utkarsh) wherein with a similar scheme the company allotted NCDs to Karvy who, in turn, down sold the NCDs to public. SEBI initiated only adjudication proceedings against Utkarsh (but not to its directors) the which culminated in passing of order Adjudication Order No. Order/BS/RG/2023-24/29358 dated September 20, 2023 imposing monetary penalty of Rs1,00,000 (Rupees one lakh only) upon the company. Directors of Utkarsh were not made parties in this proceedings. In that case, SEBI also took enforcement action by way of adjudication proceedings against Karvy wherein SEBI imposed a penalty of Rs.1,50,000/-[3] against Karvy. While imposing monetary penalty on Utkarsh Small Finance Bank Limited, SEBI considered penalty on Karvy as a mitigating factor in its order dated September 20, 2023. Other factors such as the company was redeeming the NCDs, and no complaints were received from investors were other two mitigating factors taken into account by the Adjudicating Officer while passing said order dated September 20, 2023.

66. In another identical case of ***Vaishno Devi Dairy Products Ltd***, wherein the company issued NCDs to Karvy during the financial year 2013-14 and raised Rs.25 crores in F.Y.2013-14 (date of allotment 04.02.2014 to 31.03.2014) that were down-sold by Karvy to 185 investors during the F.Y.2013-14. SEBI initiated proceedings under section 11B and 11(4) of the SEBI Act against the Company and its 5 directors. Vide order No. QJA/AA/DDHS/DDHS-SEC-1/30807/2024-25 dated September 25, 2024, SEBI held that

3 Karvy in the capacity of NBFC structured the NCDs for Utkarsh Small Finance Bank Limited for which it received an advisory fee. Thereafter, Karvy in the capacity of PMS subscribed NCDs on behalf of its clients and transferred the same to its 355 clients.

Vaishno Devi Dairy Products Ltd. *"engaged in fund mobilising activity from the public, through the offer of NCDs and has contravened the provisions of Section 56, Section 60 read with Section 2(36), Section 67(3) and Section 73 of the Companies Act, 1956 r/w Section 25(2) and Section 465 (2) of the Companies Act, 2013 and Section 117 C of the Companies Act, 1956 read with the aforesaid provisions of the ILDS Regulations."*

67. Apparently, the allotment and down selling happened after repeal of the Companies Act, 1956 and coming into force of the Companies Act, 2013, yet the findings came for violation provisions of the Companies Act, 1956 reading the power under section 55A of the Companies Act, 1956 and saving provisions under section 465(2) of the Companies Act, 2013. It has been finally held that in that- "***It is thus evident that KCL[4] was just a conduit between the investors and the company and it was pre determined by the company and KCL to sell NCDs to a large public."*** Further, the allotment of NCDs was ***a deemed public issue of securities in terms of Section 25 of Companies Act, 2013 read with Section 67 (3) of the Companies Act, 1956.*** Meaning thereby, that even for non compliance of provisions of Companies Act, 2013, violation of provisions of repealed Companies Act, 1956 could be charged and for determining the number of allottees in FY 2013-14 the provisions of section 67(3) of the Companies Act, 1956 would be taken into account. Be that as it may, since the company was under corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016 (IBC) and moratorium under section 14 of IBC was in operation, SEBI wrote a letter dated 08.09.2023 to the resolution professional (RP), stating inter alia, the facts that the issuance of NCDs by the company is in violation of public issue norms of the Companies Act, 1956 and these debentures are *void-ab-initio* and the same needs to be cancelled and refunded to the investors as funds were raised in an unlawful manner without following public issue norms. This letter to the RP had been taken on record. SEBI, however, directed the Promoter and the Managing Director of the company to make refund to the investors, the money collected by the company through the issuance of NCDs in FY 2013-14 including the application money collected from investors, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment. However, the said direction of refund was provided to be subject to the resolution plan as

[4] *Karvy*

and when passed in the proceeding before NCLT, Mumbai Bench, C.P. (IB) - 4230/MB/2018 providing for refund to the investors. In case, the resolution plan does not provide for refund, the refund shall be done by Promoter and the Managing Director of the company. Said Promoter and the Managing Director and other directors were also debarred and restrained from accessing the securities market as provided in the said order dated September 25, 2024.

68. However, vide an Adjudication Order dated April 27, 2022 a penalty of Rs.20,00,000/-[5] was imposed upon Karvy. In this order Ld. Adjudicating Officer, *inter alia*, gave findings to the effect that - "*I note that in the instant matter, both Noticee and SVDDPL have adopted a schematic approach to circumvent the regulatory framework for public issue which is explained in above paragraphs. Therefore, SVDDPL and Noticee have thus, acted in a fraudulent manner to avoid regulatory purview and thereby violated the provisions of Regulation 3(a) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003.*"

69. Both the above orders have congruency in that the findings on violation on fact and law are different. In the above cases, NCDs were allotted by the issuer companies to the Karvy–Demeter Portfolio Account, and SEBI found significant violations relating to the manner in which such NCDs were transferred and managed. Karvy was penalised by SEBI for its non-compliance with the applicable provisions of the Companies Act, 2013 and SEBI Regulations. However, in the instant case, different approach has been adopted.

70. I am also conscious of the fact that the principles of proportionality and manifest arbitrariness are *sine qua non* for such proceedings as the present one. For exercising the choice to issue directions in the peculiar facts and circumstances of this case, I have also been guided by the principles of consistency and proportionality. The current proceedings do not entail restorative justice practice as no victim restitution is contemplated instead directions of refund have been contemplated with tick box approach. The trade-off tends to be made more in favour of consistency and proportionality. While proportionality demands a penalty should be proportionate with the mischief it seeks to address and penalties cannot be disproportionate to the magnitude of default. No arithmetical formula can be devised to

[5] *NCDs allotted to Karvy in the capacity of 'Debenture Holder Representative' were down-sold to public.*

impose a fixed penalty on each case. Thus, consistency comes into play. However, given a set of alternatives, pairwise comparison matrices also come into play and different matrices may apply to a similar case if magnitude of both cases materially differ with regard to different matrices. Here again, no mathematical formula could be possible. As held by Hon'ble Supreme Court in the matter of ***SEBI v. Sunil Krishna Khaitan (Decided on 11-7-2022)*** that *consistency is a matter of occupational effectiveness, giving rise to substantive legitimate expectation then departure should not be made irrationally or on perverse grounds by the SEBI.*

71. It is gainsaying that consistent approach would always be guided by gravity and impact of a particular case rather than adopting a tick box approach. While the deviations from a pattern or a mode adopted in the past without any reasonable cause or principle can be labelled as arbitrary in nature, a deviation from the decision taken earlier would be permissible if it is rational and is based on reasonable differentiation. In the instant matter, Karvy had played active role to camouflage the allotment agreed to be a private placement as it had been doing for other companies. Yet, SEBI chose not to take any action against it nor any action has been taken against the Debenture Trustee who had been actively involved in the entire episode.

72. Be that as it may, c*onsistency is the* cornerstone of the administration of justice. It is consistency which creates confidence in the system[6]. The public policy demands the authorities performing public duties to have consistent approach. In this case, the examination and enforcement lacks uniform and consistent approach and is short of deeper analysis of conduct of other parties in the matter as brought out in submissions of all the Notices.

73. Noticee No. 1, 5, 6, 7 and 8 have relied upon the media reports of clearance of draft red herring prospectus filed by HDB Financial Services, Hero FinCorp, and Vikram Solar, etc. and have contended that SEBI has granted clearance to such companies having a significant number of public shareholders prior to the filing of their public offer documents which affirms SEBI's consistent approach of distinguishing issuer liability from off-market

6 Supreme Court in Government of Andhra Pradesh and others v. A. P. Jaiswal and others, AIR 2001 SC 499

transactions, a position that applies in KSSL's case. I note that the matter for consideration before me is not in respect of number of public shareholders of KSSL but of allegation of violation of public issue norms through Karvy.

74. Noticee No. 1, 5, 6, 7 and 8 have stated that the Board of KSSL has undergone reconstitution and the new management has undertaken several initiatives aimed at revitalizing the business and operations. The new management have since approached the debenture holders with various proposals to resolve the dues payable to the Debenture Holders. After detailed deliberations between the Debenture Trustee/ Debenture Holder Representative and the new management of the company, the parties have agreed to resolve the matter as per the terms and conditions in the amendment Trust Deed dated April 22, 2023. As per the third amendment of Debenture Trust Deed dated April 22, 2023 for regularising the defaults, I find that KSSL has commenced its repayment obligations with interest and the last instalment is due in October 2026.

75. I am also mindful of the fact that it was primarily for Karvy to restrain itself from transferring those NCDs if they were allotted to it on private placement basis against finance given by it to KSSL. In fact, in above mentioned Utkarsh Small Finance Bank Limited case the company, based on the Order passed by SEBI, had approached the ROC for compounding of an alleged violations the ROC disposed of the application without initiating any action against the Company and held that:

> *"...in the facts and circumstances of the case, the alleged violations did not pertain to actions committed by the Noticee, its promoters or directors. The ROC further indicated that in the facts of the present case, the violations had to be adjudicated visà-vis the security-holder, i.e. KCL. However, in terms of the relevant provisions of the Companies Act pursuant to which the present Compounding Application was filed by the Noticee, the ROC did not have the powers to proceed against the security-holder.*"

76. According to Noticee No. 2 and as confirmed by Noticee No 4 and corroborated by submissions of all other Noticees, the objects and purpose of fund raising by KSSL was *bona fide* for acquisition of NTL for which it was raised. The case is not the one of fraudulent fund raising or fund diversion. It is also case where KSSL and its management has taken all steps to serve the debenture holders who were not the allottees but acquirers

from Karvy and subsequent third party transfers. None of the debenture holders have complained.

77. However, since in terms of section 40(4) of the Companies Act, 2013 the allotment itself is void, and non-compliance with provisions of section 40 is an offence under section 40(5), no order dispensing with direction to refund would be permissible as was upheld in Hon'ble Supreme Court in the matter of *Sahara India Real Estate Corporation Ltd. & Ors. Vs. SEBI & Anr (2013) 1 SCC 1*. In my view divergent and inconsistent actions of SEBI could be mitigating factors for issuing penal directions. I also note that Noticee No.2 has ceased to be director of KSSL with effect from January 28, 2022.

Directions:

78. Considering all the facts and circumstances, the mitigating factors and in view of the aforesaid observations and findings, I, in exercise of the powers conferred under Section 11(1), 11(4), 11A and 11B read with Section 19 of the Securities and Exchange Board of India Act, 1992, hereby issue the following directions:

    a. Noticee No. 1 shall forthwith refund to the investors the money collected by the it through the issuance of NCDs in financial year 2017-2018 with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment.

    b. Noticee No. 1 shall issue a 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 person such as names, addresses and contact details, within 15 days of coming into force of this direction.

    c. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments.

    d. After completing the aforesaid refunds, Noticee No. 1 shall file a report of such completion with SEBI addressed to the "Division Chief, Department of Debt and Hybrid Securities (SEC), SEBI Bhavan, G Block, Bandra Kurla Complex, Bandra

(East) Mumbai –400051", within a period of 15 days, after completion of three months from the coming into force of the directions duly certified by an independent Chartered Accountant.

e. Noticee No. 5, 6, 7 and 8 shall ensure compliance of above directions by Noticee No.1 and shall be liable in case of default by it in this regard.

f. In case of failure of the Noticee No. 1, to comply with the aforesaid directions, SEBI, may, on the expiry of three months from the date of this Order:
   (i) recover such amounts, from Noticee No. 1 in accordance with Section 28A of the SEBI Act, 1992;
   (ii) initiate appropriate action against Noticee No. 1, 5, 6, 7 and 8 including adjudication and /or prosecution proceedings against them, in accordance with law;

g. Noticee No. 2 is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document and is restrained from soliciting money from the public in contravention of law, directly or indirectly and is restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in any manner whatsoever, for a period of six (6) months from the date of this order.

79. The SCN dated October 16, 2024 stands disposed against Noticee No. 3 and 4 without any direction.

80. The direction for refund, as given in Para 78 above, does not preclude the investors to pursue the other legal remedies available to them under any other law, against Noticee No. 1 for refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

81. A copy of this order shall be sent to all the Noticees, recognized Stock Exchanges, banks, depositories and Registrar and Transfer Agents of mutual funds to ensure that the directions given above are strictly complied with. A copy of this order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action.

82. The SCN dated October 16, 2024 is accordingly disposed of by this order which shall come into force with immediate effect.

SANTOSHKUMAR SHUKLA
Digitally signed by SANTOSHKUMAR SHUKLA
Date: 2025.08.29 16:46:52 +05'30'

Date: August 29, 2025

Place: Mumbai

Santosh Shukla
Quasi-Judicial Authority
Securities and Exchange Board of India