BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/DD/2022-23/21916]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of Babanraoji Shinde Sugar and Allied Industries Limited
[PAN: AACCI5569F]

In the matter of Babanraoji Shinde Sugar and Allied Industries Limited

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FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), on receipt of a complaint on November 30, 2016, conducted an examination in the matter of fund raising activity by way of issue of Non-Cumulative Redeemable Preference Shares ('**NCRPS'**) by Babanraoji Shinde Sugar & Allied Industries Limited (hereinafter referred to as '**Noticee/Company**'). Pursuant to such examination, SEBI, vide its Interim Order cum Show Cause Notice dated January 11, 2019, *inter alia*, directed Noticee as well as its directors, to refund all the money collected through the issuance and allotment of NCRPS including the application money collected from investors, pending allotment of securities, if any, with an interest of 15% per annum, from the eighth day of collection of funds from the investors to the date of actual payment, certified by two independent peer reviewed Chartered Accountants to the satisfaction of SEBI, within a period of three months from the date of the direction becoming effective.

2. I note that Hon'ble Whole Time Member (**WTM**) of SEBI, vide his order dated April 19, 2021 (**SEBI Order**), disposed of the aforesaid Interim Order dated January 11, 2019, *inter alia*, stating as under:

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

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

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

3. Accordingly, in compliance of the aforesaid SEBI Order, SEBI carried out further examination in the matter. Pursuant to the aforementioned detailed examination, SEBI observed certain non-compliance of Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(5), 5, 6, 7, 8, 9,13,15,16,16(B)(1) and 22 of SEBI (Issue and Listing of Non-Convertible Redeemable Preference Shares) Regulations 2013 (hereinafter referred to as '**NCRPS Regulations**') by Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide order dated November 02, 2021, SEBI appointed the undersigned as the Adjudicating Officer under Section 15(I) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of Section 15HB of the SEBI Act, the alleged violation of aforesaid provisions of NCRPS Regulations by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A show-cause notice dated June 07, 2022 (hereinafter referred to as '**SCN**') was issued to Noticee under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon it under the provisions of Section 15HB of SEBI Act for the aforesaid violation alleged to have been committed by it.

6. The allegations levelled against Noticee in the SCN are as under:
   a. *Noticee has raised funds through issuance of NCRPS to 6986 persons amounting to Rs. 24.47 crores during FY 2013-14. The said allotments were made in several*

tranches on multiple dates and in each such tranche, allotments were made to less than 49 investors. However, on a cumulative basis, it was noted that Noticee had allotted NCRPS to more than 49 investors during the FY 2013-14. Therefore, it is alleged that such allotments would qualify as a public issue under the Section 67 of the Companies Act, 1956.

b. *It was observed that Noticee in the examination period made public issue of NCRPS without complying with provisions of Sections 73, 60 and 56 (1) and 56 (3) of Companies Act, 1956. In this regard vide email dated July 10, 2021, it has filed for application for compounding of violations of Section 56, 60(1), 60(5), 62, 67(3), 73(1), 73(2) and 73(3) of the Companies Act, 1956.*

c. *NCRPS Regulations, effective from June 12, 2013, are applicable to the public issue and listing of NCRPS. Since the above issuance of NCRPS by Noticee amounted to public issue, it was observed that the provisions of NCRPS Regulations are applicable to the instant public offer of NCRPS by BSSAIL. In this regard it was observed that the following provisions NCRPS Regulations were required to be complied with by Noticee:*
    a. *Regulation 4(2)(a) – Application for listing of NCRPS*
    b. *Regulation 4(2)(b) – In-principle approval for listing of NCRPS*
    c. *Regulation 4(2)(c) – Credit rating has been obtained*
    d. *Regulation 4(2)(d) – Dematerialization of NCRPS*
    e. *Regulation 4(5) – Appointment of Merchant Banker*
    f. *Regulation 5 – Disclosure requirements in the Offer Document*
    g. *Regulation 6 – Filing of draft Offer Document*
    h. *Regulation 7 – Mode of disclosure of Offer Document*
    i. *Regulation 8 – Advertisements for Public Issues*
    j. *Regulation 9 – Abridged Prospectus and application forms*
    k. *Regulation 13 – Minimum subscription*
    l. *Regulation 15– Prohibition of mis-statements in the Offer Document*
    m. *Regulation 16– Mandatory Listing*
    n. *Regulation 16B. (1) – Security Deposit*
    o. *Regulation 22 – Obligations of the Issuer, etc.*

d. *However, it was observed that Noticee failed to comply with aforesaid provisions of NCRPS Regulations in respect of aforementioned public issue of NCRPS during the FY 2013-14. Therefore, it is alleged that Noticee had violated Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(5), 5, 6, 7, 8, 9, 13, 15, 16, 16(B)(1) and 22 of NCRPS Regulations.*

7. The SCN was sent to Noticee through Speed Post Acknowledgement due (hereinafter referred to as 'SPAD') on June 07, 2022, and through digitally signed email dated June 08, 2022. The SCN sent through SPAD as well as digitally signed email was duly served on Noticee. Noticee was given fifteen (15) days' time from the date of receipt of SCN to make its submissions in respect of the allegations made in the SCN.

8. Noticee, vide its letter dated June 21, 2022, submitted its reply to the SCN, wherein it was *inter-alia* mentioned that in many similar cases, SEBI did not taken any adverse action and did not impose penalty. Noticee, vide the aforementioned letter, also requested for copies/inspection of the following documents:
    a. Copy of the complaint on the basis of which SEBI has initiated the present adjudicating proceedings against them;
    b. A copy of investigation report/ examination report
    c. Date on which the findings of the investigation/examination were put up for the information/knowledge of the Whole Time Member
    d. Copy of the material placed before the Whole Tine Member to decide that there were sufficient grounds to enquire into the alleged violations.
    e. Details of all the material placed before the WTM on the basis he decided to initiate proceedings against the Noticee
    f. Date on which investigation report was approved by WTM and the present proceedings were approved.
    g. Copy of reasons recorded I by the Board, Chairman, Member or the Executive Director that there are reasonable grounds to investigate the affairs of the Noticee in the said matter.
    h. Copy of Order of the Board authorizing investigation in the matter.
    i. Any document/s which show that the Noticee has failed to comply with the provisions of Companies Act in respect of private placement /offers or any documents which shows that the Noticee has made an offer to more than 49 persons in an individual of/tranche.
    j. A copy of letter through which SEBI had requested information from Ministry of Finance (**MCA**) / ROC, Pune regarding issuance of NCRPS by the Noticee and the reply received thereof (only relevant extract provided with SCN) as well as any communication with either the Registrar of Companies/Ministry of Corporate Affairs on the impugned allotments made by the Company.

k. A copy of SEBI's internal policy of August, 2016 inter-alia dealing with Deemed Public Issue cases.

i. A copy of File Noting on the basis of which the circular of 31st December 2015 was issued.

9. In view of the request made by Noticee, an inspection was provided to Noticee on November 09,2022. The said inspection was carried out by Ms. Saachi Purohit, Authorised Representative (**AR**) of Noticee. During the inspection, relevant extract of the examination report, copy of complaint received from complainant and SCN as well as Annexures forming part of SCN were inspected by AR. Further, during the inspection, AR was informed that the copies of internal documents would not be provided to Noticee.

10. Thereafter, vide email dated November 11, 2022, Noticee was directed to submit the reply of SCN, if any on or before November 24, 2022. In the interest of natural justice, vide aforesaid email, an opportunity of personal hearing was also granted to Noticee on November 25, 2022. On November 24, 2022, Noticee submitted additional reply to the SCN.

11. On the scheduled date of hearing, Ms. Saachi Purohit, AR appeared on behalf of Noticee and reiterated earlier submissions made by Noticee vide letter/ email dated June 21, 2022 and November 24, 2022. During the hearing, AR confirmed that they did not wish to pursue the request regarding inspection or copies of the rest of documents/ information as stated in para 6 of Noticee's letter dated June 21, 2022, other than the documents which have already been shown during the inspection. Further, at the time of hearing, AR requested for an additional time of one week for making additional submissions. The request of AR was acceded to and Noticee was advised to submit their additional reply on or before December 02, 2022. On December 02, 2022, Noticee submitted additional reply in the matter.

12. Noticee in its reply dated November 24, 2022 has contended that the several of the crucial documents sought by it vide its letter dated June 21, 2022, were not provided to it. In this regard, Noticee has contended that the aforementioned documents requested go to the core of the issue and are essential for Noticee to understand the charges levelled against us, especially the enforcement Action Policy relating to deemed public issue. In support of its contentions, Noticee has placed reliance on the decision of Hon'ble Supreme Court in

the matter of T. Takano vs SEBI & Anr. (Date of Decision: February 18, 2022, C.A. Nos. 487 –488 of 2022) and Reliance Industries Ltd. v/s. SEBI(SLP(CRL) No. 3417 of 2022)

13. With regard to the aforementioned contention of Noticee, I note that Noticee in its letter dated June 21, 2022 requested the inspection of following documents:
    a. Copy of the complaint on the basis of which SEBI has initiated the present adjudicating proceedings against them;
    b. A copy of investigation report/ examination report
    c. Date on which the findings of the investigation/examination were put up for the information/knowledge of the Whole Time Member
    d. Copy of the material placed before the Whole Tine Member to decide that there were sufficient grounds to enquire into the alleged violations.
    e. Details of all the material placed before the WTM on the basis he decided to initiate proceedings against the Noticee
    f. Date on which investigation report was approved by WTM and the present proceedings were approved.
    g. Copy of reasons recorded l by the Board, Chairman, Member or the Executive Director that there are reasonable grounds to investigate the affairs of the Noticee in the said matter.
    h. Copy of Order of the Board authorizing investigation in the matter.
    i. Any document/s which show that the Noticee has failed to comply with the provisions of Companies Act in respect of private placement /offers or any documents which shows that the Noticee has made an offer to more than 49 persons in an individual of/tranche.
    j. A copy of letter through which SEBI had requested information from Ministry of Finance (MCA) / ROC, Pune regarding issuance of NCRPS by the Noticee and the reply received thereof (only relevant extract provided with SCN) as well as any communication with either the Registrar of Companies/Ministry of Corporate Affairs on the impugned allotments made by the Company.
    k. A copy of SEBI's internal policy of August, 2016 inter-alia dealing with Deemed Public Issue cases.
    l. A copy of File Noting on the basis of which the circular of 31st December 2015 was issued.

14. I note that it was duly informed to Noticee during the instant adjudication proceedings that SEBI’s internal policy documents are issued to ensure consistency and uniformity in

handling such cases by the concerned operational department. Further, no circular or communication was issued about aforesaid policy, as the same was framed for the purpose of bringing consistency and uniformity while dealing with DPI matters within SEBI. Therefore, in my view, the aforesaid policy documents which deal with the internal procedures and process to examine the DPI cases within SEBI, are not relevant in the instant proceedings.

15. I have perused the judgment of Hon'ble Supreme Court in the matter of T. Takano (Supra) and I note that the relied upon and relevant documents in the present matter were duly provided to Noticee during the course of instant proceedings which are in line with the principle pronounced via the aforesaid judgement of Hon'ble Supreme Court. It is pertinent to note that the question before the Hon'ble Supreme Court in the aforesaid judgement was whether an investigation report under Regulation 9 of the PFUTP Regulations must be disclosed to the person whom a notice to show cause is issued, when all the relied upon documents have been furnished to Noticee. In this context, the Apex court has opined at para 39 of the judgement that "*the actual test is whether the material that is required to be disclosed is relevant for the purpose of adjudication*". The Apex Court also relied on test for the standard of 'relevancy' laid down by a four judge Bench of the Hon'ble Supreme Court in Khudiram Das vs. State of West Bengal (1975) 2 SCC 81. The test is a two prong test where; firstly, the material must have nexus with the order and secondly, the material might have influenced the decision of the authority. The Black's Law Dictionary defines "nexus" as "a connection or link, often a casual one". Since, all relevant material relied upon in the instant proceedings have been provided to Noticee and most of them are the documents and replies furnished by Noticee itself such as the details of issuance of NCRPS to more than 49 investors and the certificate of refund made to shareholders etc., I find that the principle pronounced by the Hon'ble Supreme Court in said order has been duly complied with. Nevertheless, during the personal hearing held on November 25, 2022, AR of Noticee informed that they did not to pursue their request for additional documents which were sought by them vide letter dated June 21, 2022. The hearing proceedings are on record.

16. The relevant extracts of replies submitted by Noticee vide its letter dated June 10, 2022, November 24, 2022 and December 02, 2022 are given as under:

    1. *Noticee denied the allegation levelled against them.*

2. *There has been a considerable delay of 8 years in the issuance of SCN, as the impugned transaction took place in the year 2013-14. Accordingly, SCN needs to be disposed of on the basis of such delay, as it causes great prejudice to the Noticee, since the Noticee are not in possession of such old records and the law does not mandate that books of account and records for such an old period need to be preserved.*
3. *Noticee has relied on the judgement of Hon'ble SAT in the matter of Yatin Pandya HUF v/s.SEBI (SAT order dated March 24, 2022, Appeal No. 719 of 2021), Ashlesh Gunvantbhai Shah vs SEBI (order date31.1.2020), Mr. Rakesh Kathotia &Ors. Vs SEBI (Order date 27.05.2019), Ashok Shivlal Rupani v/s. SEBI (order date 22.08.2019), Sanjay Jethalal Soni & Ors. vs SEBI (order date14.11.2019), Parag Sarda vs SEBI (order date 12.11.2020), ICICI Bank Ltd. v/s. SEBI (order date 08.07.2020) and the order passed by Ld. Whole Time Member of SEBI in the matter of Monarch Networth Capital Ltd. on December 30. 2021in support of its contention for the delay.*
4. *Noticee requested copy and inspection of documents as specified in para 8 of the order. Noticee has also relied on the judgement of Hon'ble Supreme Court in the matte of T. Takano Vs SEBI & Anr. (C.A. Nos. 187 - -188 of 2022) and recent Judgment passed by the Hon'ble Supreme Court dated August 5, 2022 in the matter of Reliance Industries Ltd. vs SEBI.*
5. *Noticee and its directors have already under gone punishment in the nature of debarment as directed under Interim Order cum show-cause Notice dated January 11, 2019 till April 19, 2021.*
6. *If Noticee request for inspection of documents is rejected, then separate reasoned order needs to be passed.*
7. *In many cases, similar to their similarly placed entities have neither undergone any punishment of debarment nor have their accounts been frozen, unlike in the case of present Noticee such as Shreenath MhaskobaSakhar Karkhana Limited, Jaywant Sugars Ltd., Vitthal Corporation Limited and M/s. Vishwaraj Sugar Industries Limited.*
8. *SEBI has not taken any adverse action and has not imposed penalty in the similar cases against which SEBI has only issued directions of refund under section 11/11B of the SEBI Act and has not initiated penalty proceedings against.*
9. *The documents mentioned in para 6(c) to (h) of their letter dated June 21, 2022 are extremely important in ascertaining delay caused in the present matter, in ascertaining whether procedure laid down by law has been followed and are also*

immensely relevant to the present proceedings and therefore should be provided. It may be kindly noted that there is a procedure laid down by law to be followed in an investigation which comprises of various stages in a matter, when the Board authorised investigation, when the s/file/report was placed before the Member, when the same was viewed by the Member, when the same was approved by the Member, when and what reasons were recorded to initiate proceedings and the amount of time spent between these various stages is essential for the Noticee to ascertain delay in the present matter as well as whether or not SEBI has followed the procedure as laid down by law.

10. *Further, the Noticee has also requested for any document/s which show that the Noticee has failed to comply with the provisions of the Companies Act in respect of private placement/offers or any document which shows that the Noticee has made an offer to more than 49 persons in an individual of/tranche, A copy of letter through which SEBI had requested information from Ministry of Finance (MCA)/ROC, Pune regarding issuance of NCRPS by the Noticee and the reply received thereof (only relevant extract provided with SCN) as well as any communication with either the Registrar of Companies/Ministry of Corporate Affairs on the impugned allotments made by the Company, A copy of SEBI's internal policy of August, 2016 inter alia dealing with Deemed Public Issue cases and A copy of File Notings on the basis of which the circular of 31st December, 2015 was issued.*
11. *It may be kindly noted that other documents requested for have not been provided, which is a blatant violation of the principles of natural justice and the documents requested go to the core of the issue and are essential for the Noticee to understand the charges levelled against us, especially the Enforcement Action Policy relating to deemed public issue.*
12. *In view of the above and our submissions made under cover of our letter dated June 21, 2022, your Honour is once again kindly requested to reconsider the Noticee request for inspection of the documents as sought by us undercover of our letter dated June 21, 2022.*
13. *The Noticee Company is involved in the business of sugar and allied industries and deals mainly with farmers.*
14. *It would be extremely necessary to state that the SCN alleges that the Noticee has violated the provisions as mentioned in the SCN in respect of only one financial year i.e. FY 2013-2014.*

15. *SEBI's interpretation of the limit of 50 persons in one financial year is absolutely incorrect as the word financial year itself does not find any mention in law and the relevant provision of the Companies Act, 1956 talks about a particular offer and not number of allottees in one financial year. Even this limit of 50 for one offer is not applicable in cases where the offer is made to a domestic concern*

16. *They had made these offers mentioned in Para 1 under the purview of the Companies Act, 1956 which states:*

    Section 67 (3) of the Companies Act, 1956 provides that –

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

    (a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

    (b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation

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

17. *On a simple reading of Section 67 (3) of the Companies Act, 1956, it is clear that an invitation to subscribe can be extended in one single offer to not more than 49 persons in a private placement. It is pertinent to note that the Companies Act, 1956 is silent on the number of offers a company can make in any period or a financial year. There was no cap on the number of offers which could be floated in a particular financial year by a company under the Companies Act, 1956.*

18. *It would be pertinent to note the distinction between offers and allotment and the fact that they do not mean one and the same thing:*

(i) *An offer means an act of solicitation to subscribe to securities. Every offer may not result into allotment, for example; because of lack of subscription or devolvement of issue. Offer is preceded by approval by shareholders or by the Board, as the case may be. offer is followed by receipt of application and application money from subscribers.*

(ii) *An allotment on the other hand is the act of allocation of new securities to the concerned subscriber. With the allotment the name of the subscriber is entered in the register of the company that keeps record of the holders of the securities. Allotment* *is pursuant to the board approving the same and is preceded by offer, receipt of application for subscription and receipt of application money.*

19. *Each of the offers and allotments were made on a different date and we have made separate ROC filings for the same. Separate Form 2 for each such private placements / offers has been filed, from which it can be seen that we have not offered shares to more than 49 persons in any of the individual offers. All offers have been made well within the limit prescribed in the Companies Act, 1956 on separate days. Thus, each offer falls under the category of private placement and not public issue.*
20. *The cap of 200 on the number of persons to whom offer / allotment can be made in one financial year was introduced only after the enactment of Companies Act, 2013 (effective from 1stApril, 2014). Hence, in respect of the offers made before 31stMarch, 2014, this limit is not applicable.*
21. *The Company has issued NCRPS from financial year 2014-15 to date the Noticee has issued NCRPS to less than 200 persons in each financial year as permitted under the Companies Act, 2013 and relevant Regulations.*
22. *All these offers /allotments were made ONLY to our sugarcane suppliers/farmers who work on day to day business with the Company. These issues amount to domestic concern where expressly Section 67(3) has no application. On this ground itself, the matter should be closed on immediate basis without any adverse findings.*
23. *Noticee would like to bring to your kind attention Letter dated June 21, 2018, from the Registrar of Companies addressed to the NCLT in the matter of M/s Vishwaraj Sugar Industries Ltd., which clearly states that a plain reading of section S. 67(3) of the Companies Act, 1956 reflects that if multiple separate/different allotments are made to 49 persons or less after obtaining shareholders' approval by way of Board Resolution, it cannot be said that the Company has violated the provisions of the Companies Act, 1956. This said letter and the view taken by the ROC has also been observed and accepted by the NCLT in its order passed in the said matter. Please find enclosed a copy of the letter of the ROC addressed to NCLT as Annexure-"1", for your reference.*
24. *In contradiction to what the ROC has held, the SCN alleges violation on the same facts and on the same sections/law and clearly there are two contradictory views being taken by two different authorities. Noticee has relied on the judgement of Hon'ble Calcutta High Court in the matter of Durga Kamal Rice Mills vs CIT dated 9.4.2003, M/s Inspectorate Singapore Pte. Ltd. Vs ADIT dated June 6, 2018, ITAT*

Delhi, In M/S. Padmini Infrastructure vs DCIT, dated February 7, 2019 the Income Tax Tribunal, New Delhi etc. to support its contention.

25. *Further in a number of other matter SEBI has advised other entities to provide the following information: (i.) confirm whether the money is refunded along with 15 % interest p.a. as per SEBI's circular (no. CIR/ CFD/DIL3/18/3015) dated December 31st, 2015 (ii). submit a certificate from an independent peer reviewed practicing CA / CS certifying compliance of procedure prescribed in the aforesaid circular and (iii.) to apply for compounding of violation with NCLT and submit evidence for the same with SEBI and after these entities have complied with the above conditions SEBI has settled the matter with these entities by accepting their Consent Applications. However, no such advice has been given to them.*
26. *Despite the above, it may kindly be noted that purely by way of good order and in the interest of all our stakeholders including shareholders, lenders and farmers/suppliers, they had taken action as per this SEBI decision and had already given exit offer as per SEBI's this decision to their concerned investors and have also filed a compounding application in this regard with NCLT.*
27. *Investors' interest got adequately protected when investors were given an option to take refund as per this approved policy of SEBI.*
28. *In the light of the above submissions and facts that, the Company has made the allotments as per the law and has not violated any of the provisions of Section 67 (3) of the Companies Act, 1956 and without prejudice to the above submissions, even assuming that the alleged violations stand against the Noticee, the Noticee would like to submit that, without admitting any violations, out of abundant caution, the Noticee had bonafidely given the investors an Exit offer. Therefore, even if any prejudice has been caused to any investors the same stands rectified/corrected by the Noticee in accordance with SEBI's circular of CIR/CFD/DIL3/18/2015 dated 31st December, 2015 and no investor stands prejudiced as on date.*
29. *Since an exit offer was given in the present matter, the violation alleged is merely technical. There has been no prejudice caused to investors.*
30. *It is the duty of the quasi-judicial authorities to take all submission/ arguments/grounds of Noticee into consideration and appropriately deal with e same. Further, all questions/issues posed or raised by the Noticee have to be dealt with by the quasi-judicial authority. The quasi-judicial authorities do not have the liberty to ignore or not consider or deal with the submissions /arguments/grounds put forward by the Noticee. If any submission/ arguments /grounds put forward by*

the Noticee is rejected, the quasi-judicial authority, the reasons for the same must be given. If any submission/ arguments/ ground is ignored or not taken into consideration the same is violation of natural justice.

31. *The judicial – precedents are binding on all judicial bodies and all judicial bodies should follow such precedents in similar matter without any reservations, In numerous cases, the Hon'ble Securities Appellate Tribunal has held that in adjudicating proceedings, if a party relies on any adjudication order passed in another case, then judicial discipline demands that the Adjudicating Officer consider that order and thereafter passes an order either to follow or distinguish the earlier order or disagree with the order by recording reasons as to how that ought not to be followed. One such order of Hon'ble SAT was passed on August 7, 2074 in the matter of R.M. Shares Trading Private Limited vs. SEBI (Appeal No. 204 of 2014). Your Honour's attention is also drawn to order dated April 20, 2016 of Hon'ble SAT in the matter of M/s Krishna Enterprises v SEBI (Appeal No. 131 of 2015), wherein it was held that passing conflicting orders would not promote the development of securities market and would not be in the interest of the securities market. In the. Present matter, SEBI must apply the principle of Judicial discipline in light of above decisions relied upon*
32. *Noticee in its reply has relied on the judgement order of YCH Logistics (India) Pvt. Ltd Vs C.C.E & C.S.T dated 13th March, 2020 before CESTAT Bangalore, M/s BPL Sanyo Utilities & Appliances Ltd v. The Commissioner of Customs dated 2nd August, 2001 before Customs Excise And Gold (control) Appellate Tribunal South Zonal Bench, M/S. Sub Zero Icecream Pvt. Ltd. vs CCE dated 30 April, 2001 before Customs, Excise and Gold Tribunal – Bangalore, SEBI Adjudication Order in the matter of Gallops Enterprise Limited dated 22.2.2019 (Order No. EAD-8/KS/AA/AO/232/2018-1, Hon'ble SAT order in the matter of P.G. Electroplast Ltd. & Ors. vs SEBI dated 2 August, 2019, SEBI Adjudication Orders Jaywant Sugars Ltd. dated August 29, 2022 bearing Order No. ORDER/VV/AS/2022-23/18677 and Indreshwar Sugar Mills Ltd. dated October 28, 2022 bearing Order No. Order/BM/DS/2022-23/20813, Vitthal. Corporation Ltd. dated November 30, 2022 (order/SM/ AD/2022- 23/21683) etc.*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

17. I have carefully perused the charges levelled against Noticee, replies/submissions filed by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

    I. Whether Noticee has violated Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(5), 5, 6, 7, 8, 9,13,15,16,16(B)(1) and 22 of NCRPS Regulations?

    II. Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act?

    III. If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

18. Before proceeding to the merits of the matter, I find it pertinent to deal with preliminary objection raised by Noticee in its reply to the SCN.

19. Noticee has contended that there has been a delay of 8 years in issuance of SCN in the matter and the SCN is liable to be disposed of on the grounds of the aforesaid delay as it had caused great prejudice to Noticee. In support of its contentions, Noticee has placed reliance on the decisions of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in the matters of Yatin Pandya HUF vs SEBI (Order dated March 24, 2022; Appeal No 719 of 2021), Ashlesh Gunvantbhai Shah Vs SEBI (Order dated January 31, 2020); Mr. Rakesh Kathotia & Ors. Vs SEBI (27.5.2019) etc.

20. I have perused the decisions cited by Noticee with regard to the delay in issuance of SCN. I note from the aforementioned judgements of Hon'ble SAT that it has become trite law that SCN has to be issued within reasonable period of time and what constitutes reasonable period would depend on facts and circumstances in each case, nature of default/statute, prejudice caused, whether the third party rights had been created etc. I note from the material available on the record that in the present case, the examination was initiated by SEBI on receipt of a complaint on November 30, 2016. I note from the material available on record that based on reference received, SEBI had sought information from Noticee and ROC Pune and conducted a preliminary enquiry. Thereafter, SEBI passed an Interim Order-cum- Show Cause Notice under Sections 11(1),11(4),11B of SEBI Act against Noticee as well as its directors on January 11, 2019. Since this was an Interim Order- cum- Show Cause Notice, proceedings were conducted before WTM,

SEBI. On completion of the proceedings, vide his order dated April 19, 2021, WTM, SEBI disposed of the interim order with the following directions:

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

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

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

21. Subsequently, as per the aforesaid SEBI Order, information submitted by Noticee during the proceedings before Whole Time Member was examined in detail by SEBI. I note that during the course of examination, Noticee vide its letter dated July 10, 2021, August 10, 2021 and August 18, 2021 submitted the further reply /provided clarification with regards to queries raised by SEBI.

22. On completion of the examination, the examination report was placed before the competent authority on September 01, 2021 and the action in the matter was approved by the competent authority on September 08, 2021. Thereafter, the undersigned was appointed as Adjudicating Officer in the matter on November 02, 2021. After receipt of certain clarifications sought by the undersigned from the concerned department of SEBI, the SCN in the matter was issued on June 07, 2022. Thus, I find that the examination in the matter was completed within 1 year, subsequent to passing of order by Whole Time Member dated April 19, 2021, which also includes period of Covid pandemic.

23. In light of the foregoing, I find that examination in the matter was completed within a reasonable period of time and SCN was also issued without any delay.

24. Though Noticee has claimed that grave prejudice was caused to it in locating the documents and preparing for its defense, I note that all the relied upon documents, which have been considered as evidence in the SCN, are the documents furnished by Noticee itself and by RoC, Pune and no other documents obtained from any third party are part of

the evidence in these proceedings. I also note that the facts alleged in the SCN i.e. issuance of NCRPS to 6986 investors etc. are also admitted to by Noticee. I therefore find that the claim of Noticee that grave prejudice has been caused to it is not borne out by the aforesaid facts. In light of the above, I am unable to accept the contention of Noticee that there has been inordinate delay in issuance of SCN and that prejudice has been caused to Noticee.

25. After dealing the aforesaid preliminary objection of Noticee, I now proceed to deal with this case on the basis of merits.

26. Before moving forward, it is pertinent to refer to the aforesaid provisions of NCRPS Regulations, which are reproduced as under:

    A. ***Regulation 4(2)****: No issuer shall make a public issue of non-convertible redeemable preference shares unless the following conditions are satisfied, as on the date of filing of draft offer document and final offer document as provided in these regulations, -*

        a) it has made an application to one or more recognized stock exchanges for listing of such securities therein:

        Provided that where the application is made to more than one recognized stock exchanges, the issuer shall choose one of them as the designated stock exchange:

        Provided further that where any of such stock exchanges have nationwide trading terminals, the issuer shall choose one of them as the designated stock exchange;

        Explanation: For any subsequent public issue, the issuer may choose a different stock exchange as a designated stock exchange subject to the requirements of this regulation;

        b) it has obtained in-principle approval for listing of its non-convertible redeemable preference shares on the recognized stock exchanges where the application for listing has been made;

        c) it has obtained a credit rating from at least one credit rating agency registered with the Board and is disclosed in the offer document:

        Provided that where credit ratings are obtained from more than one credit rating agencies, all the ratings, including the unaccepted ratings, shall be disclosed in the offer document;

d) it has entered into an arrangement with a depository registered with the Board for dematerialization of the non-convertible redeemable preference shares that are proposed to be issued to the public, in accordance with the Depositories Act, 1996 and regulations made thereunder;

B. ***Regulation 4(5):*** *In case of public issue of non-convertible redeemable preference shares, the issuer shall appoint one or more merchant bankers registered with the Board at least one of whom shall be a lead merchant banker.*

C. Regulation 5: - Disclosures in the Offer Document

(1) The offer document shall contain all material disclosures which are necessary for the subscribers of the non-convertible redeemable preference shares to take an informed investment decision.

(2) Without prejudice to the generality of sub-regulation (1), the issuer and the lead merchant banker shall ensure that the offer document contains the following:

(a)the disclosures specified in Schedule II of the Companies Act, 1956;

(b) disclosure specified in Schedule I of these regulations; and

(c)additional disclosures as may be specified by the Board.

Explanation: For the purpose of this regulation, “material” means anything which is likely to impact an investor’s investment decision

D. Regulation 6: Filing of draft offer document

(1) No issuer shall make a public issue of' non-convertible redeemable preference shares unless a draft offer document has been filed with the designated stock exchange through the lead merchant banker.

(2) The draft offer document filed with the designated stock exchange shall be made public by posting the same on the website of the designated stock exchange for seeking public comments for a period of seven working days from the date of filing the draft offer document with such exchange.

(3) The draft offer document may also be displayed on the website of the issuer, merchant bankers and the stock exchanges where the non-convertible redeemable preference shares are proposed to be listed.

(4) The lead merchant banker shall ensure that the draft offer document clearly specifies the names and contact particulars of the compliance officer of the lead merchant banker and the issuer including the postal and email address, telephone and fax numbers.

(5) The lead merchant banker shall ensure that all comments received on the draft offer document are suitably addressed prior to the filing of the offer document with the Registrar of Companies.

(6) A copy of draft and final offer document shall also be forwarded to the Board for its records, along with fees as specified in Schedule III simultaneously with filing of these documents with designated stock exchange.

(7) The lead merchant banker shall, prior to filing of the offer document with the Registrar of Companies, furnish to the Board a due diligence certificate as per Schedule II of these regulations.

E. Regulation 7: Mode of disclosure of Offer Document

(1) The draft and final offer document shall be displayed on the websites of stock exchanges and shall be available for download in PDF /HTML formats.

(2) The offer document shall be filed with the designated stock exchange, simultaneously with filing thereof with the Registrar of Companies, for dissemination on its website prior to the opening of the issue.

(3) Where any person makes a request for a physical copy of the offer document, the same shall be provided to him by the issuer or lead merchant banker.

F. Regulation 8**: **Advertisements for Public issues

(1) The issuer shall make an advertisement in one English national daily newspaper and one Hindi national daily newspaper with wide circulation at the place where the registered office of the issuer is situated, on or before the issue opening date and such advertisement shall, amongst other things, contain the disclosures as per Schedule I.

(2) No issuer shall issue an advertisement which is misleading in material particulars or which contains any information in a distorted manner or which is manipulative or deceptive.

(3) The advertisement shall be truthful, fair and clear and shall not contain a statement, promise or forecast which is untrue or misleading.

(4) The credit rating shall be prominently displayed in the advertisement.

(5) Any advertisement issued by the issuer shall not contain any matters which are extraneous to the contents of the offer document.

(6) The advertisement shall urge the investors to invest only on the basis of information contained in the offer document.

(7) Any corporate or product advertisement issued by the issuer during the subscription period shall not make any reference to the issue of non-convertible redeemable preference shares or be used for solicitation

G. ***Regulation: 9 Abridged Prospectus and application forms***

1) The issuer and lead merchant banker shall ensure that:

- *(a)every application form issued by the issuer is accompanied by a copy of the abridged prospectus;*
- *(b)the abridged prospectus shall not contain matters which are extraneous to the contents of the prospectus;*
- *(c) adequate space shall be provided in the application form to enable the investors to fill in various details like name, address, etc.*

(2) The issuer may provide the facility for subscription of application in electronic mode.

H. Regulation 13 Minimum subscription

(1) The issuer may decide the amount of minimum subscription which it seeks to raise by public issue of non-convertible redeemable preference shares in accordance with the provisions of Companies Act, 1956 and disclose the same in the offer document.

(2) In the event of non-receipt of minimum subscription, all application moneys received in the public issue shall be refunded forthwith to the applicants. In the event the application monies are refunded beyond eight days from the last day of the offer, then such amounts shall be refunded together with interest at such rate as may be set out in the offer document which shall not be less than fifteen percent per annum.

I. Regulation 15: Prohibitions of mis-statements in the offer document

(1) The offer document shall not omit disclosure of any material fact which may make the statements made therein, in light of the circumstances under which they are made, misleading.

(2) The offer document or abridged prospectus or any advertisement issued by an issuer in connection with a public issue of non-convertible redeemable preference shares shall not contain any false or misleading statement.

J. Regulation 16: Mandatory Listing

(1) An issuer desirous of making an offer of non-convertible redeemable preference shares to the public shall make an application for listing to one or more recognized stock exchanges in terms of sub-section (1) of section 73 of the Companies Act, 1956.

(2) The issuer shall comply with conditions of listing of such non-convertible redeemable preference shares as specified in the Listing Agreement with the stock exchange where such non-convertible redeemable preference shares are sought to be listed.

(3) Where the issuer has disclosed the intention to seek listing of non-convertible redeemable preference shares issued on private placement basis, the issuer shall forward the listing application along with the disclosures specified in Schedule I to the recognized stock exchange within fifteen days from the date of allotment of such non-convertible redeemable preference shares.

K. ***Regulation 16(B)(1):*** *The issuer shall deposit, before the opening of subscription list, and keep deposited with the stock exchange(s) an amount calculated at the rate of one per cent of the amount of securities offered for subscription to the public.*

L. ***Regulation 22****:* ***Obligations of the Issuer, Lead Merchant Banker, etc****.*

(1) The issuer shall disclose all the material facts in the offer documents issued or distributed to the public and shall ensure that all the disclosures made in the offer document are true, fair and adequate and there is no mis-leading or untrue statements or mis-statement in the offer document.

(2) The Merchant Banker shall verify and confirm that the disclosures made in the offer documents are true, fair and adequate and ensure that the issuer is in compliance with these regulations as well as all transaction specific disclosures required in Schedule I of these regulations and Schedule II of the Companies Act, 1956.

(3) The issuer shall treat the applicants in a public issue of non-convertible redeemable preference shares in a fair and equitable manner as per the procedures as may be specified by the Board.

(4) The intermediaries shall be responsible for the due diligence in respect of assignments undertaken by them in respect of issue, offer and distribution of securities to the public.

(5) No person shall employ any device, scheme or artifice to defraud in connection with issue or subscription or distribution of non-convertible redeemable preference shares which are listed or proposed to be listed on a recognized stock exchange.

Issue No.17-I: Whether Noticee has violated Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(5), 5, 6, 7, 8, 9, 13, 15, 16, 16(B)(1) and 22 of NCRPS Regulations?

27. It has been alleged in the SCN that Noticee failed to comply with the requisite provisions of NCRP Regulations with regard to its public issue of NRCPS during financial year 2013-2014.

28. I note from records that, in the instant case that Noticee had made allotment of NCRPS to 6986 investors during financial year (FY) 2013-14 amounting to Rs. 24.47 crore, to 173 investors amounting to Rs. 14.95 crores in FY 2014-15 and to 119 investors amounting to Rs. 3.57 crores in FY 2017-18. Noticee, in its reply to the SCN, has not disputed this fact The summary of the aforesaid issues is given hereunder:

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

29. The number of investors to whom NCRPS were issued and date of issuance for the aforesaid periods, as observed from the company's letter dated May 05, 2018, is tabulated hereunder: -

Financial Year	**Date of Issuance**	**No. of investors to whom NCRPS issued**	**Amount raised (Rs. in Crore)**
2013-14	16.08.2013	48	0.05
	17.08.2013	48	0.05
	18.08.2013	48	0.05
	19.08.2013	48	0.05
	20.08.2013	48	0.05
	21.08.2013	48	0.05
	22.08.2013	48	0.05
	23.08.2013	48	0.05
	24.08.2013	48	0.05
	25.08.2013	48	0.05
	26.08.2013	48	0.05
	27.08.2013	48	0.05
	28.08.2013	48	0.05
	29.08.2013	48	0.05
	30.08.2013	48	0.05
	31.08.2013	48	0.05

Financial Year	Date of Issuance	No. of investors to whom NCRPS issued	Amount raised (Rs. in Crore)
	01.09.2013	48	0.05
	02.09.2013	48	0.05
	03.09.2013	48	0.05
	04.09.2013	48	0.05
	05.09.2013	48	0.05
	06.09.2013	48	0.05
	07.09.2013	48	0.05
	09.09.2013	48	0.05
	10.09.2013	48	0.05
	11.09.2013	48	0.05
	12.09.2013	48	0.05
	13.09.2013	48	0.05
	14.09.2013	48	0.05
	15.09.2013	48	0.07
	16.09.2013	48	0.05
	17.09.2013	48	0.05
	18.09.2013	48	0.06
	19.09.2013	48	0.05
	20.09.2013	48	0.05
	21.09.2013	48	0.10
	22.09.2013	48	0.05
	23.09.2013	48	0.05
	24.09.2013	48	0.05
	25.09.2013	48	0.05
	26.09.2013	48	0.05
	27.03.2013	48	0.05
	28.09.2013	48	0.05
	29.09.2013	48	0.05
	30.09.2013	48	0.05
	01.10.2013	48	0.05
	02.10.2013	48	0.05
	03.10.2013	48	0.05
	04.10.2013	48	0.05
	05.10.2013	48	0.05
	06.10.2013	48	0.05
	07.10.2013	48	0.05
	01.12.2013	48	0.05
	02.12.2013	48	0.05
	03.12.2013	48	0.05
	04.12.2013	48	0.05
	05.12.2013	48	0.05

Financial Year	Date of Issuance	No. of investors to whom NCRPS issued	Amount raised (Rs. in Crore)
	06.12.2013	48	0.05
	07.12.2013	48	0.05
	08.12.2013	48	0.05
	09.12.2013	48	0.05
	10.12.2013	48	0.05
	11.12.2013	48	0.05
	12.12.2013	48	1.26
	13.12.2013	48	0.88
	14.12.2013	48	0.66
	15.12.2013	48	0.70
	16.12.2013	48	0.80
	17.12.2013	48	0.79
	18.12.2013	48	1.04
	19.12.2013	48	0.92
	20.12.2013	48	0.85
	21.12.2013	48	0.98
	22.12.2013	48	1.12
	23.12.2013	48	0.65
	24.12.2013	48	1.03
	25.12.2013	48	1.35
	26.12.2013	48	1.35
	27.12.2013	48	1.35
	28.12.2013	48	0.80
	29.12.2013	48	0.67
	30.12.2013	48	0.49
	31.12.2013	18	0.22
	24.01.2014	48	0.05
	25.01.2014	48	0.05
	26.01.2014	48	0.05
	27.01.2014	48	0.05
	28.01.2014	48	0.05
	29.01.2014	48	0.05
	30.01.2014	48	0.05
	31.01.2014	48	0.05
	01.02.2014	48	0.05
	02.02.2014	48	0.05
	03.02.2014	48	0.05
	04.02.2014	48	0.05
	05.02.2014	48	0.05
	06.02.2014	48	0.05
	07.02.2014	48	0.06

Financial Year	Date of Issuance	No. of investors to whom NCRPS issued	Amount raised (Rs. in Crore)
	08.02.2014	48	0.05
	09.02.2014	48	0.05
	10.02.2014	48	0.05
	11.02.2014	48	0.05
	12.02.2014	48	0.05
	13.02.2014	48	0.05
	14.02.2014	48	0.05
	15.02.2014	48	0.05
	16.02.2014	48	0.05
	17.02.2014	48	0.05
	18.02.2014	48	0.05
	19.02.2014	48	0.05
	20.02.2014	48	0.05
	21.02.2014	48	0.05
	22.02.2014	48	0.05
	23.02.2014	48	0.05
	24.02.2014	48	0.05
	25.02.2014	48	0.05
	26.02.2014	48	0.05
	27.02.2014	48	0.05
	28.02.2014	48	0.05
	01.03.2014	48	0.05
	02.03.2014	48	0.05
	03.03.2014	48	0.05
	04.03.2014	48	0.05
	05.03.2014	48	0.05
	06.03.2014	48	0.05
	07.03.2014	48	0.05
	08.03.2014	48	0.05
	09.03.2014	48	0.05
	10.03.2014	48	0.05
	11.03.2014	48	0.06
	12.03.2014	48	0.07
	13.03.2014	48	0.07
	14.03.2014	48	0.07
	15.03.2014	48	0.07
	16.03.2014	48	0.07
	17.03.2014	48	0.07
	18.03.2014	48	0.07
	19.03.2014	48	0.07
	20.03.2014	48	0.07

Financial Year	Date of Issuance	No. of investors to whom NCRPS issued	Amount raised (Rs. in Crore)
	21.03.2014	48	0.07
	22.03.2014	48	0.07
	23.03.2014	48	0.07
	24.03.2014	48	0.07
	25.03.2014	48	0.07
	26.03.2014	48	0.07
	27.03.2014	48	0.07
	28.03.2014	8	0.01
Total		**6986**	**24.47**

Financial Year	Date of Issuance	No. of investors to whom NCRPS issued	Amount raised (Rs. in Crore)
2014-15	09.03.2015	48	5.02
	13.03.2015	48	3.81
	18.03.2015	48	3.51
	25.03.2015	29	2.62
Total		**173**	**14.95**

Financial Year	Date of Issuance	No. of investors to whom NCRPS issued	Amount raised (Rs. in Crore)
2017-18	06.03.2018	43	1.29
	09.03.2018	49	1.47
	15.03.2018	27	0.81
Total		**119**	**3.57**

30. I note from the details of the aforementioned allotment for the FY 2013-14, as submitted by Noticee to SEBI during the examination, that the aforesaid allotments were made in several tranches on multiple dates and in each such tranche, allotment was made to 48 or less than 48 investors. I observe that during FY 2013-14, on a cumulative basis, Noticee had allotted NCRPS to 6986 investors (i.e. more than 49 persons) and funds amounting to Rs. 24.47 crores were raised from such issuance.

31. I note from the letter dated September 11, 2018, received from MCA that as per their records, during the FY 2013-14, issuance of NCRPS by Noticee was to 2640 investors amounting to Rs. 9.28 crore. I also note from the aforesaid MCA letter that Noticee had not reported any NCRPS allotted during the FYs 2014-15 and 2017-18 to MCA.

32. Thus, I note there was a difference in number of investors to whom NCRPS were issued, as provided by Noticee, and as reported in the records of MCA for the FY 2013-14. Accordingly, SEBI had relied on the data submitted by Noticee during the course of examination and the same has been mentioned in the SCN for fixing the allegation against Noticee. On perusal of reply furnished by Noticee, I note that in the present proceedings, Noticee has not provided any comments in respect of the aforesaid difference in the number of investors to whom NCRPS were issued and therefore, I consider this to be an admission of the factual accuracy of the data in the SCN. Therefore, I find it appropriate to proceed on the basis of the finding provided in the SCN that Noticee had issued NCRPS to 6986 investors during the FY 2013-14.

33. In order to determine whether the aforementioned issuance of NCRPS amounts to public issue, at this juncture, I find it pertinent to refer to the provisions of Section 67(3) of Companies Act, 1956 which is reproduced hereunder:

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

...

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

(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or

(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation ...

Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more: Provided further that nothing contained in the first proviso shall apply to non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956)."

34. From the perusal of section 67(3) of Companies Act, 1956, I note that as per first proviso to Section 67(3) Companies Act, 1956, a company making offer of shares/debentures to fifty or more persons would become automatically bound to follow the obligations laid down in the Act for making public issue and listing of securities. Thus, considering that Noticee had issued NCRPS to 6986 investors i.e. to more than 49 people, during FY 2013-14, I find that Noticee had made a public issue of NCRPS in terms of the first proviso to Section 67(3) of the Companies Act, 1956 in the FY 2013-14.

35. In this context, I place reliance on the decision of the Hon'ble Supreme Court of India in Sahara India Real Estate Corporation Limited & Ors. vs. SEBI [Civil Appeal Nos. 9813 and 9833 of 2011; decided on August 31, 2012 ;(2013) 1 SCC 1], wherein it was held as under: "*...The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Subsection (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ... Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation........I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue. ...*"

36. In light of the above and ratio laid down in the aforementioned judgment of Supreme Court, I find that Noticee made a public issue of NCPRS in the FY 2013-14.

37. With regard to allegations in the SCN, Noticee in its reply to SCN has contended that its issuance of NCRPS to 6986 investors during FY 2013-14 cannot be considered as a public issue. Noticee has further contended that an invitation to subscribe can be extended in one single offer to not more than 49 persons in a private placement and that it has not made offer to more than 49 persons in a single offer during FY 2013-14 and therefore, its offer of NCRPS was a private placement. In this regard, I find it pertinent to rely on the decision of Hon'ble SAT in Neesa Technologies Limited vs. SEBI vide Appeal No. 311 of 2016, dated April 28, 2017, wherein Hon'ble SAT has held as under:

"In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning"

38. I find that the facts and circumstances of the instant adjudication matter are similar to the one dealt with in the aforesaid order of Hon'ble SAT. In the instant matter, multiple tranches of shares were issued within one FY 2013-14(147 instances), where each issue, except in one instance, were made exactly to 48 persons i.e. issues were made to persons not exceeding 49 in number. Considering the similarities in the cases, I do not find any reason to differ from the ratio laid down in the aforesaid judgement of the Hon'ble SAT and therefore, conclude that such issue of NCRPS by Noticee to 6986 investors during FY 2013-14 would amount to public issue. In view of the foregoing, I am not inclined to accept the aforesaid contention of Noticee.

39. Noticee has also contended that Companies Act, 1956 is silent on the number of offers a company can make in any period or a financial year and there was no cap on the number of offers which could be floated in a particular financial year by a company under the Companies Act, 1956. Noticee has also contended that the cap of 200 on the number of persons to whom offer / allotment can be made in one financial year was introduced only after the enactment of Companies Act, 2013 (effective from 1stApril, 2014). Hence, in respect of the offers made before March 31, 2014, this limit is not applicable. With regard to the aforementioned contention of Noticee, I note that in the judgement of Neesa Technologies Limited (Appeal No. 311 of 2016, dated April 28, 2017) where the appellant in the matter had issued non-convertible debentures (NCDs) during the FY 2013-14 to 341 persons in multiple (8) tranches, with no tranche exceeding 49 people, Hon'ble SAT had clearly considered the same to be a public issue. I am of the view that since the facts of the instant matter are also concerning issuance of securities in one financial year i.e. 2013-14, the decision of Hon'ble SAT in the aforesaid judgement would prevail in this case also. Therefore, I find the aforementioned contention of Noticee to be of no merit.

40. I note that Noticee in its reply has further contended that offers/ allotments were made only to its sugarcane suppliers/farmers who work on day to day business with it and these issues amount to domestic concern where section 67(3) of Companies Act, 1956 has no application. In this regard, I place reliance on the decision of Hon'ble SAT in Zenith

Highrise Infracon Ltd. & Ors vs. SEBI (Appeal No. 459 of 2018 and other connected appeals) wherein Hon'ble SAT has held as under:

"*The effect is, that an issue would remain in the category of a "domestic concern" only when the offer is confined to less than fifty persons. As offer extending to fifty or more persons will tantamount to a public issue.*"

41. Placing reliance on the aforesaid judgement of Hon'ble SAT, I hold that in the present case, this exemption, as argued by Noticee would not be applicable since the issue of NCRPS was made to more than 49 persons. In any case, I find that other than making a bald statement that the allotments were made only to its sugarcane suppliers/farmers, Noticee has not furnished any documents to substantiate its claim. Therefore, I am unable to accept the aforesaid contention of Noticee.

42. I note that during the proceedings, Noticee has produced a letter from Registrar of Companies(RoC), Karnataka dated June 21, 2018 addressed to National Company Law Tribunal **(NCLT**), Bangalore in the matter of M/s Vishwaraj Sugar Industries Limited, wherein RoC, Karnataka has given an opinion before NCLT, Bangalore stating that – *"By plain reading of Sec 67(3) and its proviso, it cannot be said that the Company has violated the said provision. Hon'ble NCLT may kindly pass appropriate orders as deemed fit and proper in the matter*". I note from publically available records that Hon'ble NCLT, in its judgement dated October 31, 2018 (C.P.No. 325/BB/2018) in the aforesaid matter, held as under: "*......SEBI is the regulating authority to deal with the issues raised by the Applicants. The interests of farmers are at stake in the instant case, and it is SEBI that has to decide the issue when the issue has come before them.... Tribunal cannot prejudge the issue before SEBI judging the issue at appropriate time.... The petition bearing no. C.P. No. 325/BB/2018 is hereby rejected as premature, leaving the matter to SEBI to decide the issue in accordance with law at the appropriate time*"

43. From the above, I note that Hon'ble NCLT had acknowledged the jurisdiction of SEBI in the matters regarding public issue of securities and therefore, had not decided the matter on merits, leaving the matter to SEBI to decide the issue in accordance with law. I note that SEBI has been mandated under Section 55A of the Companies Act,1956 to administer various provisions of the said Act with respect to issue and transfer of securities of listed companies, companies that intend to list as well as companies that are required to list its securities while making offer and issue of securities to the public and same has also been

accepted by the Ld. NCLT, Bangalore in its said order relied upon by Noticee. While examining the scope of this section in the Sahara India Real Estate Corporation Limited & Ors. vs. SEBI [Civil Appeal Nos. 9813 and 9833 of 2011; decided on August 31, 2012 ;(2013) 1 SCC 1, Apex Court held as follows: "*We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and nonpayment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India." "SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange."*

44. Therefore, having regard to the aforesaid judgements, it is clear that SEBI has been considered to have jurisdiction on the aspect of determination of public issue of securities. As noted earlier in the order, Hon'ble SAT, which is the appellate tribunal of SEBI, has already laid down that such issues of securities in multiple tranches, with no tranche exceeding 49 people, would amount to public issue of securities. Therefore, I find the aforesaid contentions of Noticee, based on the letter of RoC, to be of devoid of merit.

45. I note that since Noticee had made a public issue of NCRPS in the FY 2013-2014, it was under an obligation to comply with the requisite provisions of NCRPS Regulations which became effective from June 12, 2013, i.e., before the said issuance of NCRPS by Noticee. In this regard, I note that the following provisions NCRPS Regulations were required to be complied with by Noticee:

   a. Regulation 4(2)(a) – Application for listing of NCRPS
   b. Regulation 4(2)(b) – In-principle approval for listing of NCRPS
   c. Regulation 4(2)(c) – Credit rating has been obtained
   d. Regulation 4(2)(d) – Dematerialization of NCRPS
   e. Regulation 4(5) – Appointment of Merchant Banker
   f. Regulation 5 – Disclosure requirements in the Offer Document
   g. Regulation 6 – Filing of draft Offer Document
   h. Regulation 7 – Mode of disclosure of Offer Document

i. Regulation 8 – Advertisements for Public Issues
j. Regulation 9 – Abridged Prospectus and application forms
k. Regulation 13 – Minimum subscription
l. Regulation 15– Prohibition of mis-statements in the Offer Document
m. Regulation 16– Mandatory Listing
n. Regulation 16B(1) – Security Deposit
o. Regulation 22 – Obligations of the Issuer, etc

46. However, I note from the examination report that it has been stated therein that Noticee had not complied with aforesaid provisions of NCRPS Regulations in respect of aforementioned public issue of NCRPS by Noticee during FY 2013-14. I also note from the submissions of Noticee that it has not disputed the aforementioned findings/allegations of SEBI as stated in the SCN.

47. I note that Noticee in its submissions has also contended that in many cases similar to the present case, SEBI has consciously not taken any adverse action and not imposed penalty and SEBI has not provided the rationale behind discriminating against Noticee and having a completely different approach in the present matter. However, I note that Noticee has made contradictory submissions quoting certain other orders of SEBI where penalties have been levied by Hon'ble AOs in matters where facts are similar to the ones in the present matter. Be that as it may, I regard these contentions to be more in nature of questioning SEBI's policy regarding enforcement actions in such matters and find these to be outside the purview of the present adjudication proceedings. Therefore, I am not inclined to deal with this contention of Noticee.

48. In light of the above observations, I find that the allegation that Noticee has violated Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(5), 5, 6, 7, 8, 9, 13, 15, 16, 16(B)(1) and 22 of NCRPS Regulations stands established.

Issue No. 17- II: Do the violations attract monetary penalty under Section 15HB of SEBI Act?

49. It has been established in the preceding paragraphs that Noticee has violated Regulations 4(2)(a), 4(2)(b), 4(2)(c), 4(2)(d), 4(5), 5, 6, 7, 8, 9, 13, 15, 16, 16(B)(1) and 22 of NCRPS Regulations.

50. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established......*".

51. Therefore, for the above violations, as brought out in the foregoing paragraphs, I find that Noticee would be liable for monetary penalty under section 15HB of the SEBI Act which provides as following: -

SEBI Act
Penalty for contravention where no separate penalty has been provided*.*
15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

Issue No.17- III: If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

52. While determining the quantum of penalty under Section 15HB of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under: -
SEBI Act
Factors to be taken into account by the adjudicating officer.
Section 15J -While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-
(a)the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b)the amount of loss caused to an investor or group of investors as a result of the default;
(c)the repetitive nature of the default.

Explanation: For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section

53. I note that it is a settled position that the factors under section 15J are not exhaustive but are inclusive. As established in the Order, during the financial year 2013-14, Noticee had raised Rs. 24.47 crores from 6986 investors without complying with the provisions of NCRPS Regulations. I further note that the impugned issuance of NCRPS are in violation of law and money was collected from innocent, ill-informed and gullible public, without the company giving the statutory protection available to those investors under the law such as, full and necessary disclosures about the company, an exit opportunity by way of listing of the shares etc. I note that the nature of the default by Noticee is found to be serious and such defaults by Noticee are blameworthy and grave considering the amount and the number of investors involved.

54. However, I also note that Noticee, in its reply to the SCN, has contended that it has given exit offer to the investors pursuant to SEBI's direction and therefore, imposition of penalty is not warranted in the instant matter. I also find that SEBI has debarred Noticee from Securities Market from January 11, 2019 till April 19, 2021, i.e. for a period of around 2 years and 3 months. In my view, providing exit offer to its investors and serving debarment period can be considered as a mitigating factor while deciding upon the quantum of penalty in this case. However, considering the number of investors involved and amount collected, Noticee cannot avoid penal action in the instant matter just because it had attempted to make good its default.

ORDER

55. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakh only)** on Noticee i.e. Babanraoji Shinde Sugar and Allied Industries Limited, under the provisions of Section 15HB of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee.

56. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of

SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

57. Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department -DRA-4), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C-4 A, "G" Block, Bandra Kurla Complex, Bandra (E) Mumbai-400 051." Noticee shall also provide the following details while forwarding DD / payment information:

    a) Name and PAN of the Noticee
    b) Name of the case / matter
    c) Purpose of Payment-Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

58. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter- alia*, by attachment and sale of movable and immovable properties of Noticee.

59. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee i.e. Babanraoji Shinde Sugar and Allied Industries Limited and also to SEBI.

Place: Mumbai	**SOMA MAJUMDER**
Date: December 08, 2022	**ADJUDICATING OFFICER**