BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/SV/VC/2024-25/30381)

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

In respect of
PB Global Limited
(PAN: AAACP2251P)

In the matter of PB Global Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India ('hereinafter referred to as **'SEBI'**) conducted examination in respect of PB Global Limited (hereinafter referred to as the **'PBGL'** or **'Company'** or **'Noticee'**).

2. Based on the findings of examination of PBGL, SEBI initiated adjudication proceedings against the Noticee for alleged violation of the provisions of the following SEBI Regulations and Circulars:
   (a) Regulations 28(1) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ('hereinafter referred to as **'LODR Regulations'**);
   (b) Regulation 160(c) of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as **'ICDR Regulations, 2018'**);
   (c) Regulation 162 of the ICDR Regulations, 2018;
   (d) Regulation 163 of the ICDR Regulations, 2018; and
   (e) SEBI (Prohibition on Raising Further Capital from Public and Transfer of Securities of Suspended Companies) Order, 2015 dated July 20, 2015 (**'SEBI General Order dated July 20, 2015'**).

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed Shri Santosh Kumar Sharma as the Adjudicating Officer, vide order dated October 18, 2023, under Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Adjudication Rules, 1995'**) read with Section 19 of the SEBI Act, 1992, to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act, 1992 for the violations alleged to have been committed by the Noticee. Further, *vide* order dated December 07, 2023, the instant matter was transferred to the undersigned. Except for the changes of Adjudicating Officer, all other terms and conditions in the Original Orders remained unchanged and in full force and effect.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice bearing reference no.- SEBI/HO/EAD-8/SKV/VC/796/1-2/2024 dated January 05, 2024 (hereinafter referred to as **'SCN'**) was issued to the Noticee in terms of the provisions of Rule 4(1) of the Adjudication Rules, 1995 read with Section 15-I of the SEBI Act, 1992, requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed upon the Noticee under Section 15HB of the SEBI Act, 1992 for the alleged violations. I note that SCN issued to the Noticee was duly served upon the Noticee and it was acknowledged by the Noticee. Vide letter dated February 14, 2024, Noticee submitted its reply to the SCN.

5. In the interest of natural justice, an opportunity of hearing on February 16, 2024 was granted to the Noticee vide Hearing Notice dated February 07, 2024. However, vide email dated February 15, 2024, Noticee requested for extension of 1 weeks' time to appear before the undersigned, which was acceded to. Accordingly, one more opportunity of hearing on February 27, 2024 was granted to the Noticee in the instant matter. However, Noticee also failed to avail the second opportunity of hearing provided to it on February 27, 2024 in the matter. Therefore, Noticee was once again advised that if it has any additional submissions in the matter, the same may be furnished by February 29, 2024, otherwise, it shall be presumed that

Noticee has no further submissions to make, in which case, the matter shall be proceeded with on the basis of Noticee's reply and material / facts available on record. However, till date the Noticee has not made any further submissions in the matter. Therefore, I proceed to deal with the matter based on material before me including the replies filed by the Noticee.

6. The allegations levelled against the Noticee in the SCN are summarised as under:

6.1. *"The Noticee is a company listed on BSE. Noticee vide e-mail dated August 22, 2022 made an application to SEBI requesting condonation of delay for in-principal approval from BSE under Regulations 28(1) of the LODR Regulations. In this regard, comments of BSE were sought, which were furnished by BSE vide e-mail dated September 15, 2022. Regarding not obtaining in-principle approval from BSE, PBGL had inter-alia submitted the clarification to BSE vide its letter dated September 06, 2022. SEBI rejected the application for condonation of non-compliance with Regulation 28(1) of the LODR Regulations and examined the matter for various non-compliances by the Company*.

6.2. Chronology of the events related to issues, conversions and allotments of securities by the Noticee is as given below in the table:

Table No. 1

Date	***Event***
22/03/2018	*Special resolution for issue of 30,37,037, 0.5% Non-Convertible Redeemable preference shares (hereinafter referred to as* ***'NCRPS'****).*
23/03/2018	*Board resolution for allotment of NCRPS on Private placement basis to P.G. Exim Pvt Ltd, Infinity Impex Pvt Ltd and Suntech Peripherals Pvt Ltd.*
29/09/2018	*Special Resolution for conversion of 0.5% NCRPS into Compulsory Convertible Preference shares (hereinafter referred to as* ***'CCPS'****).*
01/10/2018	*Allotment of 30,37,037 CCPS on conversion of 0.5% NCRPS.*
11/05/2021	*Board meeting convened for the conversion of CCPS into equity shares.*
21/05/2021	*Notice sent to shareholders for proposing the preferential issue.*
28/06/2021	*Declaration of results of Postal Ballot.*
30/06/2021	*Allotment of 3,25,000 equity shares on conversion of 3,25,000 CCPS to non-promoter allottee - Infinity Impex Private Limited.*

Date	Event
14/07/2021	Company filed application to BSE seeking In-principle approval for 3,25,000 equity shares on the BSE-Online application portal.
07/04/2022	Suspension revoked w.e.f. 07/04/2022.
30/05/2022	Company filed listing application for 3,25,000 equity shares.

6.3. *From above table, it is observed that PBGL had allotted 30,37,037 i.e. 0.5% NCRPS of ₹10/- each on private placement basis to three allottees namely P. G. Exim Pvt. Ltd., Infinity Impex Pvt. Ltd. and Suntech Peripherals Pvt. Ltd. vide board resolution dated March 23, 2018. Subsequently, the Company reclassified the aforesaid NCRPS into 30,37,037 CCPS of ₹10/- each through a Special Resolution dated September 29, 2018 and allotted CCPS to the said allottees on October 01, 2018. Of the said CCPS, 3,25,000 CCPS were converted into equity shares of ₹10/- each, issued at a premium of ₹98/- per share and allotted to Infinity Impex Pvt. Ltd. on June 30, 2021.*

6.4. *The trading of the equity shares of PBGL was in suspension since May 13, 2002. However, the suspension was revoked w.e.f. April 7, 2022 vide exchange notice dated March 30, 2022.*

6.5. *Regarding not obtaining in-principle approval from BSE, PBGL had submitted the following clarification to BSE vide its letter dated September 06, 2022:*

(a) *"PBGL made application seeking in-principle approval for conversion of 3,25,000 CCPS into equity to non-promoter on a preferential basis in accordance with chapter V of the ICDR Regulations, 2018. However, BSE rejected application and instructed to complete process of revocation and then make an application for the "in-principle" approval for the said issue of CCPS into equity;*

(b) *Meanwhile, subject to the validity of Postal Ballot resolution, Company had filed the respective E forms with Registrar of Companies, Mumbai for the said Conversion and issue of CCPS into Equity. Failure in completion of the said formalities, would have resulted in expiry of resolution.*

(c) *The Company had done all the respective formalities related to the said issue and allotment. On receipt of approval from BSE about the revocation of suspension and trading approval, as instructed by the BSE, Company made a fresh application to BSE on May 27, 2022."*

6.6. In this regard, the following violations were observed on examination:

A) Non-obtaining of in-principle approval from stock exchange:

The allotments made by PBGL were as under:

(i) Allotment of 30,37,037 NCRPS on March 23, 2018.

(ii) Allotment of 30,37,037 CCPS (converted from aforesaid NCRPS) on October 01, 2018.

(iii) Allotment of 3,25,000 equity shares (converted from aforesaid CCPS) on June 30, 2021.

The aforesaid allotments were made during the period when the company was in suspension (May 13, 2002 to April 6, 2022). As a result, PBGL has made the aforesaid allotments without seeking in- principle approval from the exchange as required under Regulation 28(1) of the LODR Regulations.

B) Shares of proposed allottee not held in Demat form:

A listed issuer making a preferential issue of specified securities is required to ensure that all issued equity shares held by the proposed allottees are in demat form. In the instant case, Infinity Impex Private Limited who was one of the allottees, had its pre-preferential holding in physical form and thus leading to the non-compliance of Regulation 160 (c) of ICDR Regulations, 2018 by PBGL.

C) Conversion of convertible securities beyond tenure of 18 months:

In terms of Regulation 162 of ICDR Regulations, 2018, the convertible securities of the issuer shall not have tenure of more than 18 months from the date of their allotment. The 3,25,000 CCPS which were previously allotted on October 1, 2018 were converted into equity shares on June 30, 2021 which is beyond the specified tenure of 18 months for conversion. Therefore, the violation of Regulation 162 of ICDR Regulations, 2018 by PBGL was observed on examination.

D) Non-disclosure of specified information related to preferential issue:

In terms of Regulation 163 of the ICDR Regulations, 2018, the issuer is required to disclose various information related to preferential issue as explanatory statement to the notice for general meeting proposed for passing the special resolution in addition to the disclosures required under the Companies Act, 2013. However, it was observed that no disclosures were made as required in the explanatory statement to the notice for the general meeting held on September 29, 2018 and June 28, 2021, thereby, PBGL violated the Regulation 163 of the ICDR Regulations, 2018.

E) Issue of offer document and soliciting money from public for the issue of securities during suspension period:

In terms of SEBI General Order dated July 20, 2015, a suspended company is prohibited from issue of prospectus, any offer document, or advertisement soliciting money from public for the issue of securities directly or indirectly till the revocation by the concerned recognised stock exchange. Since, PBGL was soliciting money for the issue of securities before the date of revocation of suspension (April 07, 2022), it has not complied with SEBI General Order dated July 20, 2015.

6.7. In view of the above, it is alleged that Noticee has made the aforesaid allotment without seeking 'in- principle' approval from the exchange as required under Regulation 28(1) of the LODR Regulations, therefore, it has violated the Regulation 28(1) of the LODR Regulations. Further, it is alleged that Noticee has violated the Regulation 160(c), 162 and 163 of the ICDR Regulations, 2018 and the provisions of SEBI General Order dated July 20, 2015.

7. Noticee furnished replies to the SCN vide letters dated March 15, 2024 and April 08, 2024. The reply of the Noticee is as under:

7.1. "Regulation 28(1) of the LODR Regulations- In-principle approval of recognized stock exchange(s):

On Issuance of the said CCPS into Equity, pursuant to the Regulation 28(1) of the LODR Regulations, Company had made the application to the BSE Limited to seek "In-principle approval" prior to issue and allotment of conversion of 325000 compulsory convertible preference shares into equity shares to promoters and/or other than promoters on a preferential basis in accordance with provisions specified under Chapter V of ICDR Regulations, 2018 as on 07th July, 2021 alongwith the payment of Application fee of Rs. 212400/-; however, BSE rejected its application and instructed Company to first finish the process of revocation and then make an application for the "In Principle" approval for the said issue of CCPS into Equity. Meanwhile subject to the validity of Postal Ballot resolution, Company had filed the respective E forms with Registrar of Companies, Mumbai for the said Conversion of CCPS into Equity, Issue of CCPS into Equity and also for Conversion of CCPS into Equity. If Company would not have done so, then the Postal resolution would have been expired. Therefore, Company had done all the respective formalities related to the said issue and allotment.

7.2. *Regulation 160(c) of the ICDR Regulations, 2018 – all equity shares of allottee should be in DMAT form:*

The dematerialization of the shares of the respective allottee is in process.

7.3. *Regulation 162 of the ICDR Regulations, 2018 (the tenure of the convertible securities of the issuer shall not exceed eighteen months from the date of their allotment):*

The Company was suspended and hence, the Preference shareholders desired to convert the Compulsory Convertible Preference Shares into Redeemable Preference Shares and desired to take their funds back through redemption of preference shares at the price decided between the Company and Preference shareholders. Therefore, preference shareholders were not ready to convert the preference shares into equity shares as company was suspended and the said conversion would have been disadvantage for them.

7.4. *Regulation 163 of the ICDR Regulations, 2018 – Issue of Compliance Certificate related to the Convertible Securities:*

In 2018, Company only converted Redeemable preference shares (RPS) into Compulsory Convertible Preference Shares (CCPS) and as mentioned earlier also, as discussed with Stock Exchange officials and 2-3 Merchant bankers, at the time of actual conversion of CCPS into Equity, 'In principle' approval is required. Because in future Company can convert its CCPS into RPS as currently Company has done. Therefore, Company didn't obtain In-principle approval from Stock Exchange as there were chances to convert CCPS again into RPS which was depend upon Company's financial situation. And therefore, the Company has done conversion of CCPS into RPS and in FY 2021-2022, all RPS has been paid.

The Company was in process of revocation and Stock Exchange had rejected its application to obtain 'In Principle' approval for the said allotment; so Company was not in a situation to complete the relevant formalities of the said preferential allotment and hence not taken any Compliance Certificate from Practicing Company Secretary.

7.5. *SEBI (Prohibition on raising further capital from public and transfer of securities suspended companies) Order, 2015 dated July 20, 2015 (SEBI General Order dated July 20, 2015):*

Before commencing the further allotment process, Company had discussed verbally with Stock Exchange officials whether suspended company can make further allotment or not? But Company has not received any negative revert from the Stock Exchange as revocation process was going on that time. Company had consulted with 2-3 Merchnat Bankers as well but even they did not reply that Company cannot do further raising of capital. This Preferential allotment was due to need of funds only as Company wanted to complete revocation process and for which Company was in need of heavy amount of Rs. 30-32 lacs as reinstatement fees and as Company was suspended, no bank was ready to lend any funds to the company. And therefore, Company had done this preferential allotment to its existing shareholders and also did all prior intimation to Stock Exchange about the Board meetings, postal ballot formalities; on receipt of such intimations, Stock Exchange did not ask company to not proceed with the further raising of funds through preferential allotment. Company had not received any reply or communication from Stock Exchange about the restrictive instruction for the company that being a suspended company, Company cannot proceed with this allotment. Therefore, Company had done entire process as per the respective provisions."

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Notice in the SCN, submissions made by the Noticee and material available on record. The issues that arise for consideration in the present case are as follows:

   I. Whether the Noticee has violated the provisions of Regulations 28(1) of LODR Regulations, Regulation 160(c), 162 and 163 of the ICDR Regulations, 2018 and provisions of SEBI General Order dated July 20, 2015.

   II. Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act, 1992?

   III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995?

9. Before proceeding further, it is pertinent to refer to the relevant provisions of LODR Regulations, ICDR Regulations, 2018 and SEBI General Order dated July 20, 2015 which are alleged to have been violated. The said provisions provide as under:

<u>LODR Regulations</u>:

In-principle approval of recognized stock exchange(s).

28. *(1) "The listed entity, before issuing securities, shall obtain an 'in-principle' approval from recognized stock exchange(s)......"*

<u>ICDR Regulations, 2018</u>:

Conditions for preferential issue

160. *A listed issuer making a preferential issue of specified securities shall ensure that:*

………..

(c) all equity shares held by the proposed allottees in the issuer are in dematerialised form;

Tenure of convertible securities

162. *The tenure of the convertible securities of the issuer shall not exceed eighteen months from the date of their allotment.*

163. *(1) The issuer shall, in addition to the disclosures required under the Companies Act, 2013 or any other applicable law, disclose the following in the explanatory statement to the notice for the general meeting proposed for passing the special resolution:*

a) objects of the preferential issue;

b) maximum number of specified securities to be issued;

c) intent of the promoters, directors or key managerial personnel of the issuer to subscribe to the offer;

d) shareholding pattern of the issuer before and after the preferential issue;

e) time frame within which the preferential issue shall be completed;

f) identity of the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/or who ultimately control the proposed allottees.

<u>SEBI General Order dated July 20, 2015</u>:

3. In order to ensure effective enforcement of listing conditions and improve compliance environment among the listed companies and taking into account the interests of investors in securities and the securities market, it is felt necessary to strengthen the regulatory *mechanism in the above regard. Accordingly, in exercise of powers conferred under sections 11 and 11A of the SEBI Act, in order to protect the interest of investors, it is hereby ordered that -*

a) a suspended company, its holding and/or subsidiary, its promoters and directors shall not, issue prospectus, any offer document, or advertisement soliciting money from the public for the issue of securities, directly or indirectly; till the suspension is revoked by the concerned recognised stock exchange or securities of such company are delisted in accordance with the applicable delisting requirements, whichever is earlier:

……………

10. Based on perusal of the material available on record and giving regard to the facts and submission of the Noticee and circumstances of the case, I record my findings hereunder:

Issue I. Whether the Noticee has violated the provisions of Regulations 28(1) of LODR Regulations, Regulation 160(c), 162 and 163 of the ICDR Regulations, 2018 and provisions of SEBI General Order dated July 20, 2015.

A) Non-obtaining of in-principle approval from stock exchange:

11. It was alleged in the SCN that the Noticee allotted 30,37,037 NCRPS on March 23, 2018, allotted 30,37,037 CCPS (converted from aforesaid NCRPS) on October 01, 2018 and further allotted 3,25,000 equity shares to non-promoter allottee viz. Infinity Impex Private Limited (converted 3,25,000 CCPS from aforesaid CCPS) on June 30, 2021. The aforesaid allotments were made during the period when the company was in suspension (May 13, 2002 to April 6, 2022). As a result, Noticee allegedly made the aforesaid allotments without seeking 'in-principle' approval from the exchange as required under Regulation 28(1) of the LODR Regulations.

12. Regarding not obtaining 'in-principle' approval from BSE, Noticee submitted that on Issuance of the said CCPS into Equity, pursuant to the Regulation 28(1) of the LODR Regulations, Company had made the application to the BSE Limited to seek 'In-principle' approval prior to issue and allotment of conversion of 3,25,000 compulsory convertible preference shares into equity shares to promoters and/or

other than promoters on a preferential basis in accordance with provisions specified under Chapter V of ICDR Regulations, 2018 as on July 07, 2021 along with the payment of Application fee of Rs. 212400/-, however, BSE rejected its application and instructed the company to first finish the process of revocation of suspension of trading of its scrip and then make an application for the 'In Principle' approval for the said issue of CCPS into Equity. Meanwhile subject to the validity of Postal Ballot resolution, Company had filed the respective E forms with Registrar of Companies, Mumbai for issue of CCPS into Equity and also for conversion of CCPS into Equity. If Company would not have done so, then the Postal resolution would have expired. Therefore, Noticee had done all the respective formalities related to the said issue and allotment.

13. I note that as per Regulation 28(1) of LODR Regulations "*"The listed entity, before issuing securities, shall obtain an 'in-principle' approval from recognized stock exchange(s)......".* Hence, Noticee was required to obtain the 'in-principle' approval from the exchange before issue and allotment of securities viz. issue of NCRPS on March 23, 2018, allotment of 30,37,037 CCPS (converted from aforesaid NCRPS) on October 01, 2018 and allotment of 3,25,000 equity shares to Infinity Impex Private Limited (converted 3,25,000 aforesaid CCPS) on June 30, 2021. However, Noticee filed an application to BSE on July 14, 2022 seeking 'in-principle' approval for 3,25,000 equity shares on the BSE-Online application portal. Therefore, I hold that the Noticee's aforesaid issue and allotment of NCRPS on March 23, 2018, allotment of CCPS (converted from aforesaid NCRPS) on October 01, 2018 and further allotment of 3,25,000 equity shares on June 30, 2021 were done without obtaining 'in-principle' approval from the exchange as required under Regulation 28(1) of the LODR Regulations.

14. In view of the above, I hold that Noticee has violated the provisions of Regulation 28(1) of the LODR Regulations.

B) Shares of proposed allottee not held in Demat form:

15. As per Regulation 160 (c) of ICDR Regulations, 2018, a listed issuer making a preferential issue of specified securities is required to ensure that all issued equity shares held by the proposed allottees are in dematerialised form. In the instant case, it was alleged in the SCN that Infinity Impex Private Limited who was the allottee of aforesaid 3,25,000 equity shares, had its pre- preferential holding in physical form instead of dematerialised form and thus Noticee failed to comply with the provisions of Regulation 160 (c) of ICDR Regulations, 2018.

16. In response to above allegation, Noticee submitted that the dematerialization of the shares of the respective allottee is in process.

17. I note that as per Regulation 160 (c) of ICDR Regulations, 2018, a listed issuer making a preferential issue of specified securities is required to ensure that all issued equity shares held by the proposed allottees are in demat form. Noticee submitted that the dematerialization of the shares of the respective allottee is in process, from which it can be inferred that pre- preferential holdings of Infinity Impex Private Limited were in physical form when preferential allotment was done by the Noticee. Therefore, I hold that at the time of allotment of equity shares to Infinity Impex Private Limited on preferential basis, Noticee failed to ensure that all pre- preferential holdings of Infinity Impex Private Limited were in dematerialised form.

18. In view of the above, I hold that Noticee has violated the provisions of Regulation 160 (c) of ICDR Regulations, 2018 by PBGL.

C) Conversion of convertible securities beyond tenure of 18 months:

19. In terms of Regulation 162 of ICDR Regulations, 2018, the convertible securities of the issuer shall not have tenure of more than 18 months from the date of their allotment. SCN alleged that the aforesaid 3,25,000 CCPS, which were previously allotted on October 1, 2018, were converted into equity shares on June 30, 2021 which is beyond the specified tenure of 18 months for conversion. Therefore,

Noticee allegedly violated the provisions of Regulation 162 of ICDR Regulations, 2018.

20. In response to above allegation, Noticee submitted that the Company was suspended and hence, the preference shareholders desired to convert the CCPS into Redeemable Preference Shares and desired to take their funds back through redemption of preference shares at the price decided between the Company and preference shareholders. Therefore, preference shareholders were not ready to convert the preference shares into equity shares as company was suspended and the said conversion would have been disadvantage for them.

21. I note that as per Regulation 162 of ICDR Regulations, 2018, the convertible securities of the issuer shall not have tenure of more than 18 months from the date of their allotment. Noticee submission that preference shareholders desired to convert the CCPS into Redeemable Preference Shares and desired to take their funds back through redemption of preference shares at the price decided between the Company and preference shareholders, therefore, preference shareholders were not ready to convert the preference shares into equity shares as company was suspended and the said conversion would have been disadvantage for them cannot be considered as an acceptable reason for not complying with the aforesaid provisions of ICDR Regulations, 2018.

22. I note that Noticee was under obligation to convert the aforesaid 3,25,000 CCPS into equity shares within 18 months from the date of their allotment as per the provisions of Regulation 162 of ICDR Regulations, 2018, however, these CCPS were allotted on October 1, 2018 and converted into equity shares on June 30, 2021 (converted in 33 months), which is beyond the specified tenure of 18 months for conversion.

23. In view of the above, I hold that Noticee has violated the provisions of provisions of Regulation 162 of ICDR Regulations, 2018.

D) Non-disclosure of specified information related to preferential issue:

24. In terms of Regulation 163 of the ICDR Regulations, 2018, the issuer is required to disclose various information related to preferential issue as explanatory statement to the notice for general meeting proposed for passing the special resolution in addition to the disclosures required under the Companies Act, 2013. In this regard, it was alleged in the SCN that no disclosures were made as required in the explanatory statement to the notice for the general meeting held on September 29, 2018 and June 28, 2021, thereby, Noticee violated the Regulation 163 of the ICDR Regulations, 2018.

25. In response to above allegation, Noticee submitted that at the time of actual conversion of CCPS into Equity, 'In-principle' approval is required. Because in future Company can convert its CCPS into Redeemable Preference Shares (RPS) as currently Company has done. Therefore, Company didn't obtain In-principle approval from Stock Exchange as there were chances to convert CCPS again into RPS which would depend upon Company's financial situation. And therefore, the Company has done conversion of CCPS into RPS and in FY 2021-2022, all RPS has been paid. The Company was in process of revocation and Stock Exchange had rejected its application to obtain 'In Principle' approval for the said allotment, so Company was not in a situation to complete the relevant formalities of the said preferential allotment and hence not taken any compliance certificate from practicing Company Secretary.

26. I note that the allegation is that the Noticee did not disclose the various information related to preferential issue as explanatory statement to the notice for general meeting held on September 29, 2018 and June 28, 2021 as required under Regulation 163 of the ICDR Regulations, 2018, however, Noticee's above reply is not relevant and related to the allegations w.r.t. 'Non-disclosure of specified information related to preferential issue' levelled against it. Therefore, I am inclined to presume that the Noticee has nothing to offer in his defense in this regard and therefore, it has admitted to the allegations levelled against it in the SCN.

27. In view of the above, I hold that Noticee has violated the provisions of Regulation 163 of the ICDR Regulations, 2018.

E) Issue of offer document and soliciting money from public for the issue of securities during suspension period:

28. In terms of SEBI General Order dated July 20, 2015, a suspended company is prohibited from issue of prospectus, any offer document, or advertisement soliciting money from public for the issue of securities directly or indirectly till the revocation by the concerned recognised stock exchange. In the instant case, it was alleged that Noticee was soliciting money for the issue of securities before the date of revocation of suspension (April 07, 2022), thus, it has not complied with SEBI General Order dated July 20, 2015.

29. In response to above allegation, Noticee submitted that before commencing the further allotment process, Company had discussed verbally with Stock Exchange officials whether suspended company can make further allotment or not. But Company has not received any negative revert from the Stock Exchange as revocation process was going on at that time. Company had consulted with 2-3 Merchnat Bankers as well, but even they did not reply that Company cannot do further raising of capital. This Preferential allotment was due to need of funds only as Company wanted to complete revocation process and for which Company was in need of heavy amount of Rs. 30-32 lacs as reinstatement fees and as Company was suspended, no bank was ready to lend any funds to the company. And therefore, Company had done this preferential allotment to its existing shareholders and also did all prior intimation to Stock Exchange about the Board meetings, postal ballot formalities, on receipt of such intimations, Stock Exchange did not ask company to not proceed with the further raising of funds through preferential allotment. Company had not received any reply or communication from Stock Exchange about the restrictive instruction for the company that being a suspended company, Company cannot proceed with this allotment. Therefore, Company had done entire process as per the respective provisions.

30. I note that as per SEBI General Order dated July 20, 2015, a suspended company is prohibited from issue of prospectus, any offer document, or advertisement soliciting money from public for the issue of securities directly or indirectly till the revocation by the concerned recognised stock exchange. Noticee's submission that it was in need of funds and no bank was ready to lend funds to it, therefore, Noticee had done preferential allotment to its existing shareholders is not tenable as Noticee cannot violate the prevailing regulatory provisions for raising the funds.

31. Noticee's further submission that it did prior intimation to Stock Exchange, however it had not received any negative revert from the Stock Exchange, Stock Exchange did not ask Noticee to not proceed with the further raising of funds through preferential allotment, Noticee had not received any reply or communication from Stock Exchange about the restrictive instruction for the company that being a suspended company, it cannot proceed with this allotment and on consultation, Merchnat Bankers also not replied to Noticee that company cannot do further raising of capital etc. are not acceptable reasons as the Noticee was under obligation to comply with all the rules and regulations of securities market. I note that Noticee cannot remain ignorant of securities law and it cannot take shelter under such reasons that Stock Exchange did not inform or Stock Exchange did not give restrictive instruction to Noticee. Noticee was liable to comply with the applicable regulatory provisions, which it failed to do so. Therefore, I hold that Noticee solicited money from the investors for the aforesaid issue of securities before the date of revocation of suspension (April 07, 2022) in violation of the provisions of SEBI General Order dated July 20, 2015.

32. In view of the above, I hold that Noticee has violated the provisions of Regulation 160 (c) of ICDR Regulations, 2018 by PBGL.

Issue II. Does the violation, if any, attract monetary penalty under Section 15HB of the SEBI Act, 1992?

33. In the light of findings and observations against the Noticee brought out in the foregoing paragraphs, it has been established that the Noticee has violated the

regulatory provisions of Regulations 28(1) of LODR Regulations, Regulation 160(c), 162 and 163 of the ICDR Regulations, 2018 and provisions of SEBI General Order dated July 20, 2015.

34. Considering the material available on record, reply of the Noticee and findings made hereinabove and it has been held that Noticee has violated the provisions of LODR Regulations, ICDR Regulations, 2018 and SEBI General Order dated July 20, 2015. The said violations make the Noticee liable for monetary penalty under the provisions of the SEBI Act, 1992.

35. In this regard, reliance is placed upon the judgment of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund** [2006] 68 SCL 216(SC), wherein, it was *inter-alia* 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 and hence the intention of the parties committing such violation becomes wholly irrelevant...".

36. The aforesaid violations, makes the Noticee liable for penalty under Section 15 HB of the SEBI Act, 1992. The contents of the said provisions of law is reproduced herein below:

<u>SEBI Act, 1992:</u>

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 shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15-J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995?

37. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15-J of the SEBI Act, 1992, which reads as under: -

<u>SEBI Act, 1992</u>

Factors to be taken into account while adjudging quantum of penalty

15J *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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 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.]

38. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of non-compliance to the provisions of the SEBI Regulations and Order is not available. With respect to the repetitive nature of the default, I do not find anything on record. In the present matter, Noticee was under a statutory obligation to abide by the provisions of LODR Regulations, ICDR Regulations, 2018 and SEBI General Order dated July 20, 2015, which it failed to do in relation to issue and allotment of securities. The said violations by the Noticee attracts monetary penalty. Therefore, I feel it appropriate to levy a penalty which is commensurate with the nature of violation, which acts as a deterrent factor for the Noticee and others in protecting the interest of investor in Securities market.

ORDER

39. Considering all the facts and circumstances of the case including the submissions of the Noticee and findings elaborated hereinabove, the factors mentioned in 15J of the SEBI Act, 1992 and exercising the powers conferred upon me under Section 15-I of SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, 1995, I hereby impose a monetary penalty of ₹5,00,000/- (INR Five Lakh only) under Section 15HB of the SEBI Act, 1992 on the Noticee. In my view, the said penalty is commensurate with the violations committed by the Noticee in this case.

40. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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

41. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated 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.

42. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee and also to the SEBI.

Place: Mumbai	**SHASHI KUMAR VALSAKUMAR**
Date: May 31, 2024	**ADJUDICATING OFFICER**