

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
ANANTH NARAYAN G., WHOLE TIME MEMBER
FINAL ORDER

**Under Sections 11, 11(4) and 11B of the Securities and Exchange Board of
India Act, 1992**

In respect of:

Noticee. No.	Name of the Entity	PAN
1	Krishna Kumar Singh	AKMPS8799L
2	Rajiv Kumar Nayar	ABMPN3664J
3	Narayan Madhav Kumar	AYZPK9827A

In the matter of Alchemist Holdings Limited

BACKGROUND:

1. Alchemist Holdings Limited (hereinafter referred to as "**AHL**" / "**The Company**") had issued Redeemable Preference Shares (hereinafter referred to as "**RPS**") to 4,26,676 investors during the years 2006 to 2009 and raised funds amounting to INR 444.67 crores. Mr. Krishna Kumar Singh (hereinafter referred to as "**Noticee No.1**") was allegedly a director of AHL during the period October 10, 2013 to June 24, 2015 i.e. subsequent to the period of issuance of RPS. Mr. Rajiv Kumar Nayar (hereinafter referred to as "**Noticee No.2**") was allegedly a director of AHL during the period May 01, 2014 to April 30, 2015 i.e. subsequent to the period of issuance of RPS. Mr. Narayan Madhav Kumar (hereinafter referred to as "**Noticee No.3**") was allegedly a director of AHL during the period January 20, 2009 to February 19,

2009 (for a period of 1 month) i.e. between 2 RPS and not at the time of issuance of RPS.

2. An Interim Order cum show cause notice dated September 20, 2013 bearing reference no. WTM/SR/CIS-NRO/22/09/2013 (hereinafter referred to as “**Interim Order**”) was passed by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) against AHL and 7 of its directors **excluding Noticee No.1, 2 & 3**, for non-compliance with deemed public issue provisions under the Companies Act, 1956 (hereinafter referred to as “**Companies Act**”) including Sections 56, 60, 69 and 73. The directions in the Interim Order *inter alia* prohibited AHL and 7 of its directors **excluding Noticee No.1, 2 & 3**, from collecting money from investors till further orders and they were directed to show cause as to why appropriate actions under SEBI Act should not be taken against them for non-compliance with the aforesaid provisions
3. Thereafter, a Final Order dated August 14, 2015 bearing reference no. WTM/PS/38/NRO/AUG/2015 (hereinafter referred to as “**2015 Final Order**”) was passed by SEBI against AHL and its directors **including Noticee No.1 & 2**, amongst others wherein it was held that AHL had failed to comply with section 67(3) of the Companies Act. Accordingly, RPS issued by AHL was deemed to be a public issue. The 2015 Final Order also found that consequently AHL had violated sections 56, 60, 69 and 73 of the Companies Act, 1956.
4. With respect to **Noticee No.1 & 2**, the 2015 Final order recorded that the Noticee No. 1 & 2 were then present / current directors of AHL, therefore, they were also liable to make repayments to investors in terms of Section 73 of the Companies Act, 1956. The 2015 Final order directed AHL and its directors including the Noticee No. 1 & 2 *inter alia* to jointly and severally refund the money collected by AHL through the issuance of RPS for contravention of aforesaid provisions of the Companies Act. Further, through the said order, SEBI was directed to issue a show cause notice to the Noticee No. 1 & 2 for any further appropriate directions including restraining them from accessing the securities market.

5. With respect to **Noticee No. 3**, the 2015 final order recorded that the name of Noticee No. 3 was not included in the interim order, therefore, SEBI was advised to examine his role and take appropriate steps.
6. Subsequently, an appeal (bearing Appeal no. 431 of 2015) was filed by Noticee No. 1 (Mr. Krishna Kumar Singh) against the 2015 Final Order. Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") *vide* order dated April 06, 2018, quashed and set aside the 2015 Final Order qua Mr. Krishna Kumar Singh, with liberty to SEBI issue a fresh show cause notice, if deemed fit. *Vide* said order, Hon'ble SAT observed that *"even current director is entitled to receive a SCN before any order could be passed against him"*.
7. Further, an appeal (bearing appeal no. 423 of 2015) was also filed by AHL and Mr. Chandra Shekhar Chauhan, one of the directors of AHL against the 2015 Final Order. Hon'ble SAT *vide* order dated June 29, 2018 (hereinafter referred to as "**2018 SAT Order**"), upheld the 2015 Final Order but set aside the direction to pay interest '*compounded at half yearly intervals*'. The order passed by Hon'ble SAT was appealed before the Hon'ble Supreme Court. The Hon'ble Supreme Court, by an order dated November 25, 2019 (hereinafter referred to as "**2019 SC Order**"), refused to interfere with the 2018 SAT Order.
8. Since the direction of refund to the investors in terms of 2015 Final order was not complied with, SEBI had initiated recovery proceedings against DDL and its directors (excluding Noticee No. 1, 2 & 3) *vide* the Recovery Certificate No. 3406 of 2021 dated April 01, 2021. Pursuant to the initiation of recovery proceedings, bank accounts and demat accounts of DDL and its directors (excluding Noticee No. 1, 2 & 3) were attached *vide* notices of attachment no. 6523 of 2021 and 6524 of 2021 dated April 01, 2021.
9. Pursuant to the direction of 2015 Final Order, Show Cause Notice (hereinafter referred to as "**SCN**") dated May 06, 2022 was issued to Noticee No. 2; SCN dated August 05, 2022 was issued to Noticee No. 3 and as per direction of Hon'ble SAT

order dated April 06, 2018, SCN dated August 05, 2022 was issued to Noticee no.1, which are subject matter in this proceeding.

SHOW CAUSE NOTICE:

10. The aforesaid SCNs issued to Noticee No.1, 2 & 3 made following allegations against them:

- 10.1. The company had admittedly issued RPS to 4,26,676 investors during the years 2006 to 2009 and total funds raised by these issues was Rs. 444.67 crores, without complying with 'public issue' norms as stipulated under Sections 56, 60, 67, 69 and 73 of the Companies Act, 1956 and in doing so AHL was found to have violated the said provisions of the Companies Act, 1956.
- 10.2. Vide the 2015 Final Order, AHL and its directors were directed to make refunds as per Section 73(2) of the Companies Act. The Noticee No. 3 was one of the directors of AHL during the period January 20, 2009 till February 19, 2009.
- 10.3. Noticee No. 1 was appointed as director of AHL on October 10, 2013. Noticee No. 2 was appointed as director of AHL on May 01, 2014.
- 10.4. There was no material available on record to show that any of the officers set out in clauses (a) to (c) of Section 5 of Companies Act, 1956 or any specified Director of the company was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Therefore, the Noticee no. 1, 2, & 3 are officers in default as per Section 5(g) of the Companies Act, 1956.
- 10.5. A director who is part of a company's board is responsible and liable for all acts carried out by a company. Accordingly, Mr. Narayan Madhav Kumar (Noticee No. 3) was also responsible for all the deeds/acts of AHL during the period of his directorship and was also obligated to ensure refund of the money collected by the company to the investors as per the provisions of Section 73 of Companies Act, 1956. Therefore, it was alleged that the

Noticee No. 3 has violated the provisions of Sections 56, 60, 69 and 73 of the Companies Act, 1956.

10.6. The liability of AHL to repay under Section 73(2) of the Companies Act, 1956 is continuing and such liability continues till all the repayments are made. The Noticee No. 1, 2 & 3 along with the other directors named in the 2015 Final Order and AHL has failed to comply with the directions as per the 2015 Final Order.

10.7. The Noticee No. 1, 2 & 3 was responsible for all the deeds/acts of AHL and is obligated to ensure refund of the money collected by AHL to the investors as per the provisions of Section 73 (2) of Companies Act, 1956.

10.8. In view of the above, the Noticee No. 1, 2 & 3 had violated the provisions of Section 73(2) of the Companies Act, 1956.

11. The aforesaid SCNs were delivered to Noticee No. 1 and 2. The SCN issued to Noticee No. 3 returned undelivered, the same was served on him along with a hearing notice through Newspaper publication (details mentioned in paragraph 16 below of this order).

REPLY:

12. Noticee No.1 submitted his reply dated September 02, 2022 to the aforesaid respective SCN. Noticee No. 1's submissions in brief are as under:

12.1. He was retired Lieutenant Colonel from Indian Army.

12.2. In the year 2013, he was approached by the management of Company to join their board of directors. His role in the Company would be a namesake role and would not be required to be a signatory on any of the official documents as they were looking to fulfil the statutory requirement of having three directors in a Public Limited company.

12.3. Admittedly, he was appointed as a non-executive director of the Company with effect from 10.10.2013. He was not in charge of, and/or was responsible for the conduct of the business of the company nor did he receive any sitting fee or any other remuneration from the Company. He neither performed any

day-to-day affairs related to the Company nor did he attend any board meetings of the Company. He did not receive any notice or agenda for attending any board meeting of the Company. He was in no manner responsible for the Company and hence, cannot be liable as per Section 5(g) read with Section 73 of the Act.

- 12.4. His directorship stood vacated on 10.10.2014 in terms of Section 167(1)(b) of the Companies Act, 2013, as he did not attend any board meetings for 12 months.
- 12.5. He sent his Resignation Letter dated 23.06.2015 to the Company. As per the records available on the Ministry of Corporate Affairs (MCA) website, the date of his cessation as a director of the Company is 24.06.2015. He had already resigned from the Company at the time when 2015 Final order was passed. His name has been fallaciously roped in the matter and recorded in the Final Order due to the Company's negligence to timely filing his resignation with the RoC.
- 12.6. He joined the Company as a non-executive director only on 10.10.2013, four years after the impugned RPS issues. He did not have any knowledge about such alleged RSP issuance / illegal activities on behalf of the Company. He was not in charge of or responsible for the Company at the time of commission of the alleged offence. Hence, cannot be held liable under Section 73 of the Act.
- 12.7. The documents clearly shows that he cannot be made liable under Section 5(g) read with Section 73 of the Act as the Company had appointed a whole time director to manage all of its business operations and day to day affairs.
- 12.8. He was never a Whole Time Director of the Company. Mr. Chandra Shekhar Chauhan was the whole-time director of the Company from 2013-2015 and Mr. Chandra Shekhar Chauhan along with Mr. Vikramaditya Singh were responsible for the day-to-day affairs of the Company.
- 12.9. SEBI has failed to show any evidence which could indicate that he was a managing director or whole time director or was a person charged by the Board with the responsibility of compliance with the provisions of the Act at any time for the Company.

- 12.10. He placed reliance on Hon'ble Supreme Court decision in the matter of SEBI vs. Gaurav Varshney, (2016) 14 SCC 430 and Hon'ble SAT decision in the Appeals of Pritha Bag vs. SEBI (Appeal no. 291 of 2017), decision dated February 14, 2019; and Sayanti Sen vs. SEBI (Appeal no. 163 of 2018), decision dated August 09, 2019.
13. Noticee No.2 submitted his reply dated June 08, 2022 to the aforesaid respective SCN. Noticee No. 1 submissions in brief are as under:
- 13.1. He was retired Colonel from Indian Army.
- 13.2. The SCN does not mention any kind of incriminating material on record against him.
- 13.3. The alleged default of the Company was done in the year 2010 and he was appointed as an Additional Director on 01.05.2014 and later resigned on 30.04.2015. He was Additional Director of the company for one year and there was no proximity to the tenure of his Directorship with the alleged default of the company. Therefore, he cannot be made liable for the non-compliance of the provisions of the Companies Act 1956 when he was not a Director of the Company at the relevant time when the alleged non-compliance was committed.
- 13.4. After his retirement from Indian Army in 2013, his friend suggested to join AHL as Director. Therefore, he joined the Company on 01.05.2014 as an Additional Director. He was never called to the office of AHL. He was only called to sign the RoC compliance i.e., DIN Number forms etc. No responsibility was assigned to him by the Company. He was also not a shareholder of the company.
- 13.5. During his tenure as the Director he did not attend any board meetings, no notice to attend board meetings were sent to him, no document promissory notes were signed by him. No role was given to him in the day-to-day activities and decision making of the company. He was kept in dark with the functioning of the company.

13.6. He was not given any remuneration while acting as Director. Upon enquiring with AHL, he was assured that instead of a monthly salary, a lump sum amount shall be paid at the end of one year of his tenure as the Director.

13.7. He resigned from the post of the director on 30.04.2015. When the 2015 final order was passed on 14.08.2015, he was not a Director of the Company. He cannot be held liable as an “officer in default”. Therefore, he is not liable to refund the money collected by the Company through the issuance of RPS in terms of Section 73(2) of the Companies Act, 1956. He never violated the provision of Section 73(2) of the Companies Act, 1956.

14. Noticee No.3 did not submit any reply to the aforesaid respective SCN.

HEARING:

15. An opportunity of personal hearing was granted to the all 3 Noticees on June 14, 2023 through video conferencing. Noticee No. 1 along with his Authorized Representative (AR) appeared online on June 14, 2023 and reiterated the submission made vide his reply dated September 02, 2022. Noticee No. 2 along with his AR appeared online on June 14, 2023 and reiterated the submission made vide his reply dated June 08, 2022.

16. The SCN dated August 05, 2022 issued to Noticee No. 3 was returned undelivered. Attempt was also made for affixture of said SCN, however, the said SCN could not be affixed. Subsequently, the said SCN was uploaded on SEBI website under the head “Unserved Summons / Notices”. Further, vide notification dated June 10, 2023 published in newspaper *Hindustan Times*; notification dated June 10, 2023 published in newspaper *Amar Ujala* and notification dated June 10, 2023 published in newspaper *Ajit – Punjab di Awaz*, the Noticee No.3 was notified by SEBI that SCN and hearing notice was issued to Noticee No.3 and he have been given an opportunity of being heard on June 14, 2023 at the time and the venue mentioned therein. The Noticee no. 3 was also advised to download the copy of said SCN and hearing notice from SEBI website under the head “Unserved Summons / Notices”. The Noticee No. 3 was also advised that in case he failed to file reply or to appear

for hearing, SEBI shall be proceeded further in the matter on the basis of material available on record.

17. It is noted that subsequent to the newspaper publication, Noticee No. 3 neither filed any reply to the SCN nor appeared for hearing scheduled on June 14, 2023 nor sought any adjournment.

CONSIDERATION OF ISSUES AND FINDINGS:

18. I have perused the Interim Order, Final Order, SAT Order, SCNs, replies and other material available on record. On perusal of the same, the following issues arise for consideration. Each issue is dealt with separately under different headings:

18.1. **Issue No. 1:** *Whether the offer of RPS made by the Company is in violation of provisions of Sections 56, 60, 69 and 73 of the Companies Act, 1956?*

18.2. **Issue No.2:** *Whether the Noticee No.1, 2 & 3 are jointly and severally liable for making refund in accordance with Section 73(2) of the Companies Act, 1956 or is liable for any other direction for the contraventions by AHL?*

Issue No. 1: Whether the offer of RPS made by the Company is in violation of provisions of Sections 56, 60, 69 and 73 of the Companies Act, 1956?

19. I note that the 2015 Final Order dated October 08, 2015 held that AHL had come out with an Offer of RPS and allotted the shares and mobilized funds amounting to approximately INR 444.67 crores from 4,26,676 investors during the years 2006 to 2009 in violation of provisions of Sections 56, 60, 69 and 73 of the Companies Act, 1956. I note that the 2015 Final Order has become final against AHL and its other directors (excluding Noticee No. 1, 2 & 3) vide SAT order dated June 29, 2018 and 2019 SC order. The allegation made in SCNs with respect to violation of provision of Companies Act, 1956 by AHL does not require any further consideration in this order since the issue has already being decided conclusively in 2015 Final Order which has been upheld vide SAT order dated June 29, 2018 and 2019 SC order. Therefore, the objective of the present proceedings is solely to determine the

liability of the Noticee No. 1, 2 & 3 as a director of AHL for the aforesaid violation by AHL.

Issue No. 2: *Whether the Noticee No.1, 2 & 3 are jointly and severally liable for making refund in accordance with Section 73(2) of the Companies Act, 1956 or is liable for any other direction for the contraventions by SAIL?*

20. I note that 2015 Final Order held that the Noticee No.1 and 2, who were said to be the then current directors of AHL, are liable to make repayments to investors in terms of Section 73 of the Companies Act, 1956. Therefore, though no SCN / interim order have been issued to Noticee No. 1 & 2, vide 2015 Final order direction for refund of monies collected were issued in respect of the Noticee No.1 and 2. Further, paragraph 32 of 2015 Final order goes on to direct SEBI to issue SCN to Noticee No. 1& 2 *“for any further appropriate directions including restraining these from accessing the securities market”*. An appeal (bearing Appeal no. 431 of 2015) was filed by Noticee No. 1 against the 2015 Final Order. Hon’ble SAT vide order dated April 06, 2018, quashed and set aside the 2015 Final Order qua Noticee No.1, with liberty to SEBI issue a fresh show cause notice. Vide said order, Hon’ble SAT observed that *“even current director is entitled to receive a SCN before any order could be passed against him”*.

21. Subsequently, SCNs were issued to Noticee No. 1 & 2 alleging that they were obligated to ensure refund of the money collected by AHL to the investors as per the provisions of Section 73 (2) of Companies Act, 1956. Therefore, the SCNs dated May 06, 2022 and August 05, 2022 alleged that the Noticee No. 1 & 2 had violated the provisions of Section 73(2) of the Companies Act, 1956.

22. I also note that 2015 Final Order held that the Noticee No. 3 was appointed as director of the Company on January 20, 2009 and had resigned on February 19, 2009 and his name was not included in the interim order. In the 2015 Final Order, SEBI was advised to examine Noticee No.3 role and take appropriate steps in this

regard. Therefore, no directions was issued in respect of the Noticee No.3 vide 2015 Final order. Subsequently, SCN dated August 05, 2022 was issued to Noticee No. 3 alleging that he was obligated to ensure refund of the money collected by AHL to the investors as per the provisions of Section 73 (2) of Companies Act, 1956. Therefore, the SCN alleged that the Noticee No. 3 had violated the provisions of Section 73(2) of the Companies Act, 1956.

23. The Noticee No.1 and 2 has repeatedly contended in their submissions that they were appointed as directors of AHL subsequent to issuance / allotment of RPS and were not a director of AHL at the time of issuance / allotment of RPS. Noticee No. 1 submitted that Mr. Chandra Shekhar Chauhan was the whole-time director of AHL from 2013-2015. Therefore, they are not liable to refund the money collected by the Company through the issuance of RPS in terms of Section 73(2) of the Companies Act, 1956.

24. Noticee No. 1 submitted that he was appointed as director of AHL for namesake to fulfill the statutory requirement. Noticee No. 1 & 2 also submitted that they were not in charge of and were not responsible for the conduct of the business of the company nor did they receive any sitting fee / remuneration from AHL. They neither performed any day-to-day affairs related to AHL nor did they attend any board meetings of AHL. They neither receive any notice or agenda for attending any board meeting of AHL nor signed any documents.

25. Noticee No. 3 did not made any submission in the matter.

26. In this regard, I note that though the Noticee No. 1, 2 & 3 were not party to the Interim order, Noticee No. 1 & 2 were made party to the 2015 Final Order on the ground that they were then the current directors of AHL and with respect to Noticee No.3, SEBI was advised to examine his role. I note that in 2015 Final Order period of directorship of Noticee No. 1 & 2 was not mentioned and period of directorship of Noticee No. 3 was mentioned as January 20, 2009 to February 19, 2009.

27. From the document available on the publicly accessible MCA website, I note the tenure of Noticee Nos. 1, 2 & 3 in AHL are as under:

Table No. 1

Noticee. No.	Name of the director	Date of Appointment	Date of Resignation
1	Krishna Kumar Singh	October 10, 2013	June 24, 2015
2	Rajiv Kumar Nayar	May 01, 2014	April 30, 2015
3	Narayan Madhav Kumar	January 20, 2009	February 19, 2009

28. As per the 2015 Final order, AHL had issued / allotted RPS to 4,26,676 investors and raised total funds of ₹ 444.67 crores. The details of the allotment of RPS on various dates and the amount raised, are as under:

Table No. 2

S.No.	Date of issue/allotment of the preference shares	No. of shares of face value ₹ 10/- each approved for allotment	Amount raised (₹)
1.	25/03/2006	46,71,200	4,67,12,000/-
2.	04/06/2006	2,43,25,300	24,32,53,000/-
3.	31/08/2006	3,81,53,400	38,15,34,000/-
4.	14/02/2007	8,34,64,400	83,46,44,000/-
5.	31/05/2007	4,74,67,500	47,46,75,000/-
6.	25/09/2007	5,79,47,500	57,94,75,000/-
7.	29/02/2008	5,01,45,500	50,14,55,000/-
8.	30/06/2008	4,40,50,400	44,05,04,000/-
9.	31/10/2008	5,42,02,900	54,20,29,000/-
10.	28/02/2009	4,02,44,700	40,24,47,000/-
Total		44,46,72,800	444,67,28,000/-

29. From Table No. 1 and 2 above, I note that the Noticee No. 1 was director of AHL from October 10, 2013 to June 24, 2015 and Noticee No. 2 was director of AHL from May 01, 2014 and April 30, 2015. The illegal allotment of RPS by AHL (as per the 2015 Final Order) were done during the period 2006 to 2009. I note that Noticee No. 1 and 2 were directors of AHL subsequent to the allotment / issuance to RPS by AHL. Thus, I find that Noticee No. 1 & 2 were not directors of AHL at the relevant

time of illegal issue & allotment of RPS. Further, from the documents available on the publicly accessible MCA website, I note that there are (a) no documents which suggest that Noticee No. 1 & 2 had attended any board meetings of AHL; and (b) no financial statements which are signed by the Noticee No.1 & 2.

30. From Table No. 1 and 2 above, Noticee No. 3 was director of AHL from January 20, 2009 to February 19, 2009 (**one month only**). The last 2 RPS allotment by AHL were done on October 31, 2008 and February 28, 2009. I note that Noticee No. 3 was director of AHL between last 2 RPS allotment. From the document available on the publicly accessible MCA website, I note that there are (a) no documents which suggest that Noticee No. 3 had attended any board meetings of AHL; and (b) no financial statement which is signed by the Noticee No.3. Thus, the preponderance of probability is that Noticee No. 3 was not involved in the board processes of illegal allotment / issuance of any RPS.

31. As stated in the preceding paragraph, there is no material before me that leads to the conclusion that Noticee No. 1, 2 & 3 were directors of AHL at the time of issuance / allotment of RPS. Under Section 73(2) of the Companies Act, 1956, liability of refund is cast on a director who is an officer in default in a company. In this regard, it would be relevant to note that liability of directors of companies which have made public issue of securities in violation of the mandate of Section 67(3) of the Companies Act and without complying with Section 73(1) of the Companies Act, have been the subject of several decisions of the Hon'ble SAT in the Appeals of (a) **Manoj Agarwal vs. SEBI (Appeal no. 66 of 2016)**, decision dated July 14, 2017; (b) **Pritha Bag vs. SEBI (Appeal no. 291 of 2017)**, decision dated February 14, 2019; and (c) **Sayanti Sen vs. SEBI (Appeal no. 163 of 2018)**, decision dated August 09, 2019.

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

32.1. In order to find a person to be jointly and severally liable to refund monies collected, in accordance with section 73(2) of the Companies Act, he/she

must not only have been a director of the company during the relevant period when the impugned public issue had taken place, but also he/she must have been an “officer in default”, as defined in section 5 of the Companies Act.

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

32.3. In the absence of any managing director, if the board has specified any particular director or manager or any other person as an “officer in default”, only that specified director, manager etc., as the case may be, would be an officer in default.

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

32.5. In the absence of all of the above, by deeming fiction, all directors of the company would be regarded as “officers in default”.

33. In the instant matter, I note that there are no documents / evidence to suggest that Noticee No. 1 & 2 were directors of AHL at the relevant time of illegal allotment of RPS or that Noticee No. 3 in fact played role of a director of AHL. Further in respect of Noticee No.3, even the 2015 Final Order *prima facie* did not find any evidence regarding involvement of Noticee No. 3 in illegal allotment of RPS by AHL. Consequently it is not possible to hold the Noticee No. 1, 2 & 3 as an officer in default of AHL *during year 2006 to 2009* when AHL had made issue of RPS. It necessarily therefore follows, that the Noticee No. 1, 2 & 3 cannot be held liable for making refund under Section 73(2) of the Companies Act, 1956.

34. Furthermore, I note that SEBI had initiated recovery proceedings against AHL and its directors, pursuant to which, bank accounts and demat accounts of AHL and its directors were attached and recovery proceedings are ongoing. Therefore, the statutory remedy for refund of monies illegally collected by the company, is already in progress. Even the period of directorship of the Noticee No. 3 was barely for a period of 1 month. Considering all these facts, I am of the view that Noticee Nos.1,

2 & 3 cannot be held liable either for refund or be liable for any other direction in the context of contravention of provisions of Companies Act, 1956 by AHL.

ORDER:

35. In view of the aforesaid observations and findings, I, in exercise of the powers conferred upon me under Sections 11 (1), 11(4), 11A and 11B (1) read with Section 19 of the SEBI Act, hereby dispose of the SCN dated August 05, 2022 issued to the Noticee No.1, SCN dated May 06, 2022 issued to the Noticee No. 2 and SCN dated August 05, 2022 issued to the Noticee No.3 without any direction.

36. A copy of this order shall be served upon the Noticee Nos. 1, 2 & 3.

37. A copy of this order shall also be forwarded to concerned Registrar of Companies, Stock Exchanges, Registrar and Transfer Agents and Depositories for their information and necessary action.

-Sd-

DATE: JULY 12, 2023

ANANTH NARAYAN G.

PLACE: MUMBAI

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA