



भारतीय प्रतिभूति
और विनिमय बोर्ड
Securities and Exchange
Board of India

SPAD

GENERAL MANAGER
NORTHERN REGIONAL OFFICE

SEBI/NRO/DDHS/JS/ASR/35768/1/2022

August 05, 2022

Narayan Madhav Kumar
House No: 2047,
Sector 44C,
Chandigarh - 160044

Sub- Show Cause Notice under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of M/s Alchemist Holding Limited

- 1) Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received a reference dated June 02, 2010 from Shri Tapas Paul, Member of Parliament alleging that M/s Alchemist Holdings Limited (hereinafter referred to as 'AHL') was conducting illegal and fraudulent activities by carrying on the business of collecting money at a very high interest rate, in different and unauthorised schemes framed by it. Also, enclosed in the complaint was an application form of AHL for the private placement of redeemable preference shares amounting to Rs. 12 crore. As per the application form, AHL was offering redeemable preference shares (hereinafter referred to as 'RPS') of different redemption periods having different redemption premium and maturity value. The form also indicated the annualised yield under each of the plans offered. As indicated in the form, the issue was to open on March 01, 2006.
- 2) In view of the above complaint, SEBI issued letters to AHL for providing information in the matter. Several correspondences were exchanged between SEBI and AHL in the matter. Thereafter, pursuant to the preliminary enquiry into the non-compliances with the public issue norms stipulated under the provisions of the Companies Act, 1956 including Sections 56, 60, 69 and 73 thereof by AHL in respect of offer of RPS, an ex-parte interim order bearing no. WTM/SR/CIS-NRO/22/09/2013 dated September 20, 2013 (hereinafter referred to as 'the interim order') (Annexure 1) was issued against AHL and its directors including Mr. Sunil Kanti Kar, Mr. Brij Mohan Mahajan, Mr. Balvir Singh, Mr. Sukrit Sood, Ms. Ashima Sood, Mr. Vikramaditya Singh and Mr. Chandra Shekhar Chauhan.
- 3) Subsequently, SEBI passed a Final Order no. WTM/PS/38/NRO/AUG/2015 dated August 14, 2015 (Annexure 2) under Sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') against Alchemist Holdings

“हम हिन्दी पत्राचार का स्वागत करते हैं।”

उत्तरी प्रादेशिक कार्यालय : प्लॉट बी, आठवीं मंजिल, ऑफिस टॉवर-1, एन.वी.सी.सी. कॉम्प्लेक्स, पूर्व किदवाई नगर, नई दिल्ली - 110023

Northern Regional Office : Plot-B, 8th Floor, Office Tower-1, NBCC Complex, East Kidwai Nagar, New Delhi-110023 दूरभाष (Phone) : 011 - 69012998

प्रधान कार्यालय : सेबी भवन, प्लॉट सं. सी-4 'अ', जी-ब्लॉक, बान्द्रा कुर्ला कॉम्प्लेक्स, बान्द्रा (पूर्व) मुंबई - 400051 दूरभाष (Phone) : 022 - 26449000

Head Office : SEBI Bhavan, Plot No. C-4A, G-Block, Bandra Kurla Complex, Bandra (E) Mumbai - 400051 Web : www.sebi.gov.in



Limited and the Directors, viz. Mr. Brij Mohan Mahajan, Mr. Vikramaditya Singh and Mr. Chandra Shekhar Chauhan, for the non-compliances with the public issue norms stipulated under the provisions of the Companies Act, 1956, including Sections 56, 60, 69 and 73 thereof, by AHL in respect of offer of RPS and directed that AHL along with the abovementioned directors and present directors Mr. Krishna Kumar Singh and Mr. Rajiv Kumar Nayar jointly and severally, shall refund the money collected by AHL through the issuance of RPS (which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956), to the investors including the money collected from investors, till date, pending allotment, if any, with an interest of 15% per annum compounded at half yearly intervals, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) to the investors till the date of actual payment. It was also directed in the aforesaid SEBI Order dated August 14, 2015 that Mr. Narayan Madhav Kumar (hereinafter referred to as '**Noticee**') was the director of AHL during January 20, 2009 till February 19, 2009, and therefore, his role shall also be examined by SEBI and appropriate directions be passed w.r.t. the Noticee.

- 4) An appeal was filed by AHL and its director Mr. Chandra Shekhar Chauhan against the SEBI Order dated August 14, 2015 before SAT. SAT vide its Order dated June 29, 2018 (**Annexure 3**) upheld the SEBI Order dated August 14, 2015, with the modification of removing the direction given in the said Order to pay interest "*compounded at half yearly intervals*". Thereafter, an appeal was filed before the Hon'ble Supreme Court of India which was dismissed by its Order dated November 25, 2019 (**Annexure 4**).
- 5) Further, SEBI vide its Order bearing no. WTM/MPB/EFD-1-DRA-IV/193/2021 dated June 18, 2021 (**Annexure 5**), directed inter alia that Mr. Sukrit Sood, Ms. Ashima Sood and Mr. Balvir Singh shall jointly and severally along with the Company and its other Directors mentioned in the SEBI Order dated August 14, 2015 shall refund the money collected from public by issuance of RPS with an interest of 15% p.a. from the eighth day of the collection of funds till repayment.
- 6) On analysis of the material available on record, following is observed:
 - a) Board of Directors of AHL, vide its board meeting held on February 10, 2006 passed a resolution approving the issue of redeemable preference shares on a private placement basis aggregating to Rs. 12 crore. The resolution also included the terms and conditions of the redeemable preference shares, the details of which are as given below

Plan	A	B	C	D	E	F
Issue price minimum 100 preference shares	1000/-	1000/	1000/-	1000/	1000/-	1000/



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Redemption Period	4 yrs.	6 yrs.	9 yrs.	12 yrs.	15 yrs.	16 yrs.
Redemption Premium	500/-	1,000/-	2,000/-	4,100/-	7,000/-	9,000/-
Maturity value	1,500/-	2,000/-	3,000/-	5,100/-	8,000/-	10,000/-
Annualised Yield on investment	10.25%	11.72%	12.40%	13.81%	14.10%	14.65%

It has also been mentioned in the resolution that the said issue of RPS does not require any prior approval /rating from Government, SEBI or other Statutory Authorities

- b) The Minutes of the Meetings of the Board of Directors (i.e., for meetings held on March 25, 2006, June 04, 2006, August 31, 2006, February 14, 2007, May 31, 2007, September 25, 2007, February 29, 2008, June 30, 2008, October 31, 2008 and February 28, 2009) revealed that the Board of the Company had passed similar resolutions, *inter alia*, approving the allotment of RPS of ₹10 each to "as per list of applicants, showing the necessary details placed on the table, duly initialled by Chairman". The offer of Redeemable Preference Shares is stated to have been made to 4,26,676 persons as a "private placement issue"
- c) The Company has admittedly issued RPS to 4,26,676 investors and total funds raised by issue of these was ₹444.67 crore. The details of the allotment of RPS on various dates and the amount raised as noted from the Form 2, are as under:

Sr. No.	Date of passing of the Board Resolution and allotment	No. of shares of face value Rs. 10/- each approved for allotment	Amount raised (Rs.)
1.	25.03.2006	46,71,200	4,67,12,000/-
2.	04.06.2006	2,43,25,300	24,32,53,000/-
3.	31.08.2006	3,81,53,400	38,15,34,000/-
4.	14.02.2007	8,34,64,400	83,46,44,000/-
5.	31.05.2007	4,74,67,500	47,46,75,000/-
6.	25.09.2007	5,79,47,500	57,94,75,000/-
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/-



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Total	44,46,72,800	444,67,28,000/-
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* As per Form 2 filed with RoC, 5,42,02,900 RPS were allotted on October 31, 2008. The date of special resolution authorising the issue of 5,42,02,900 RPS is February 25, 2008

- 7) In view of the above, AHL was found to have violated the provisions of law as enumerated below:

A. The provisions of sub sections (1) and (3) of Section 56 of Companies Act, 1956 read as below:

"56. Matters to be stated and reports to be set out in prospectus.

(1) Every prospectus issued-

(a) by or on behalf of a company, or

(b) by or on behalf of any person who is or has been engaged or interested in the formation of a company, shall state the matters specified in Part I of Schedule II and set out the reports specified in Part II of that Schedule; and the said Parts I and II shall have effect subject to the provisions contained in Part III of that Schedule.

(2) ...

(3) No one shall issue any form of application for shares in or debentures of a company, unless the form is accompanied by a memorandum containing such salient features or a prospectus as may be prescribed] which complies with the requirements of this section."

B. The provisions of Sections 60 of Companies Act, 1956 read as below:

"60. Registration of prospectus.

(1) No prospectus shall be issued by or on behalf of a company or in relation to an intended company unless, on or before the date of its publication, there has been delivered to the Registrar for registration a copy thereof signed by every person who is named therein as a director or proposed director of the company or by his agent authorised in writing, and having endorsed thereon or attached thereto-

(a) any consent to the issue of the prospectus required by section 58 from any person as an expert; and

(b) in the case of a prospectus issued generally, also-

(i). copy of every contract required by clause 16 of Schedule II to be specified in the prospectus, or, in the case of a contract not reduced into writing, a memorandum giving full particulars thereof; and

(ii). where the persons making any report required by Part II of that Schedule have made therein, or, have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a



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written statement signed by those persons setting out the adjustments and giving the reasons therefor...."

C. The provisions of sub sections (1), (2) and (3) of Section 67 of Companies Act, 1956 read as below:

"67. Construction of references to offering shares or debentures to the public, etc

(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.

(2) Any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended 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)."

The following observations of the Hon'ble Supreme Court of India in Sahara India Real Estate Corporation Limited & Ors. vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011) (hereinafter referred to as the "Sahara Case"), while examining the scope of Section 67 of the Companies Act, 1956, are worth consideration:-

Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of sub sections (1) and (2), that is to any section of the public, if



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the offer or invitation is 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 otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public

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 Sub-section (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."

D. The provisions of Section 69 of Companies Act, 1956 read as below:

Prohibition of Allotment Unless Minimum Subscription Received

(1) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the amount stated in the prospectus as the minimum amount which, in the opinion of the Board of directors, must be raised by the issue of share capital in order to provide for the matters specified in clause 5 of Schedule II has been subscribed, and the sum payable on application for the amount so stated has been paid to and received by the company, whether in cash or by a cheque or other instrument which has been paid.

(2) The amount so stated in the prospectus shall be reckoned exclusively of any amount payable otherwise than in money, and is in this Act referred to as "the minimum subscription".

(3) The amount payable on application on each share shall not be less than five per cent of the nominal amount of the share.

(4) All moneys received from applicants for shares shall be deposited and kept deposited in a Scheduled Bank-

- (a) until the certificate to commence business is obtained under section 149, or*
- (b) where such certificate has already been obtained, until the entire amount payable on applications for shares in respect of the minimum subscription has been received by the company, and where such amount has not been received by the company within the time on the expiry of which the moneys received from the applicants for shares are required to be repaid without interest under sub-section(5), all moneys received from applicants for shares shall be returned in accordance with the provisions of that sub-section. In the event of*



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any contravention of the provisions of this sub-section, every promoter, director or other person who is knowingly responsible for such contravention shall be punishable with fine which may extend to fifty thousand rupees.

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

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

(6) Any condition purporting to require or bind any applicant for shares to waive compliance with any requirement of this section shall be void.

(7) This section, except sub-section (3) thereof, shall not apply in relation to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

D. The provisions of sub sections (1), (2) and (3) of Section 73 of Companies Act, 1956 read as below:

"73. Allotment of shares and debentures to be dealt in on stock exchange

(1) Every company intending to offer shares or debentures to the public for subscription by the issue of a prospectus shall, before such issue, make an application to one or more recognised stock exchanges for permission for the shares or debentures intending to be so offered to be dealt with in the stock exchange or each such stock exchange.

(1A) Where a prospectus, whether issued generally or not, states that an application under sub-section (1) has been made for permission for the shares or debentures offered thereby to be dealt in one or more recognised stock exchanges, such prospectus shall state the name of the stock exchange or, as the case may be, each such stock exchange, and any allotment made on an application in pursuance of such prospectus shall, whenever made, be void, if the permission has not been granted by the stock exchange or each such stock exchange, as the case may be, before the expiry of ten weeks from the date of the closing of the subscription lists :

Provided that where an appeal against the decision of any recognised stock exchange refusing permission for the shares or debentures to be dealt in on that stock exchange has been preferred under section 22 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), such allotment shall not be void until the dismissal of the appeal.

(2) Where the permission has not been applied under subsection (1) or such permission having been applied for, has not been granted as aforesaid, the company



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shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(3) All moneys received as aforesaid shall be kept in a separate bank account maintained with a Scheduled Bank until the permission has been granted, or where an appeal has been preferred against the refusal to grant such permission, until the disposal of the appeal, and the money standing in such separate account shall, where the permission has not been applied for as aforesaid or has not been granted, be repaid within the time and in the manner specified in sub-section (2); and if default is made in complying with this sub-section, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to fifty thousand rupees."

- 8) In view of the above, it was held in the SEBI Order dated August 14, 2015 that AHL has violated the public issue norms stipulated under the provisions of the Companies Act, 1956 including Sections 56, 60, 69 and 73 thereof in respect of offer of RPS. Therefore, vide the aforesaid Order, AHL and its directors were directed to make refunds as per the mandate under Section 73(2) of the Companies Act also for regulatory action for committing the above violations.
- 9) The Noticee was one of the directors of AHL during the period January 20, 2009 till February 19, 2009 (**Annexure 6**).
- 10) As per Section 5 of Companies Act, 1956, "officer who is in default" means (a) the Managing Director/s; (b) the Whole-Time Director/s; (c) the manager; (d) the secretary; (e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; (f) any person charged by the Board with the responsibility of complying with that provision; (g) where any company does not have any of the officers specified in clauses (a) to (c), any Director or Directors who may be specified by the Board in this behalf or where no Director is so specified, all the Directors.
- 11) In this regard, it is also noted that there is 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 is officer in default as per Section 5(g) of the Companies Act, 1956.
- 12) As mentioned above, the Noticee was one of the directors of AHL during the period January 20, 2009 till February 19, 2009. However, his name was not included in the Interim Order of SEBI dated September 20, 2013. In view of the same, vide SEBI Order dated



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August 14, 2015, SEBI was directed to examine the role of the Noticee in the issuance of RPS by the AHL. 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 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 is alleged that the Noticee has violated the provisions of Sections 56, 60, 69 and 73 of the Companies Act, 1956.

- 13) The liability of the company to repay under Section 73(2) of the Companies Act, 1956 is continuing and such liability continues till all the repayments are made. Therefore, on the basis of examination as above, it is observed that the Noticee 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. In view of the above, it is alleged that the Noticee has also violated the provisions of Section 73(2) of the Companies Act, 1956.
- 14) In view of the foregoing, the Noticee is hereby called upon to show cause as to why suitable directions under sections 11, 11(4), 11A and 11B(1) of the SEBI Act shall not be issued against the Noticee for the alleged violations mentioned above, including but not limited to restrain the Noticee from accessing the capital market for a period deemed appropriate
- 15) This show cause notice is without prejudice to the rights of SEBI to issue a supplementary notice and to initiate any other proceedings/actions of the aforesaid violations in terms of the SEBI Act and rules or regulations made thereunder.
- 16) The reply of the Noticee, if any, should reach the undersigned, at the address given below, as well as through email at vyotis@sebi.gov.in and ashutoshsr@sebi.gov.in (in MS-Word format), within 21 days from the date of receipt of this notice, failing which it shall be construed that the Noticee have no reply to submit and the matter shall be proceeded on the basis of the material available on record.

**Securities and Exchange Board of India
Northern Regional Office,
8th floor, Plate B, Tower 1,
NBCC Complex
East Kidwai Nagar, New Delhi - 110023.**

- 17) In case you are desirous of a personal hearing before the Whole Time Member, SEBI, the same may be intimated accordingly.
- 18) You are advised to keep SEBI informed about the change in your correspondence address, if any, and provide updated email-id and phone numbers, till the proceedings are complete.



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- 19) You are also advised to submit a photocopy of your Income Tax Permanent Account Number card (PAN Card) for our records.
- 20) Documents relied upon in the notice have been annexed as per the list of enclosures.
- 21) You may also note that a settlement mechanism is provided under the SEBI (Settlement Proceedings) Regulations, 2018. If you wish to opt for the settlement process, you may apply for the same in the manner given in the aforesaid regulations under intimation to the undersigned.

Jyoti Sharma

Enclosures

1. Copy of SEBI order no. WTM/SR/CIS-NRO/22/09/2013 dated September 20, 2013
2. Copy of SEBI order no. WTM/PS/38/NRO/AUG/2015 dated August 14, 2015
3. Copy of SAT order dated June 29, 2018
4. Copy of Supreme Court Order dated November 25, 2019
5. Copy of SEBI order no. WTM/MPB/EFD-1-DRA-IV/193/2021 dated June 18, 2021
6. Copy of Form 32 filed with MCA showing date of appointment and cessation of the Noticee.