BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: PRASHANT SARAN, WHOLE TIME MEMBER

ORDER

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

In respect of -

1. **Alchemist Capital Limited (PAN:AABCT5925F) and its Directors (present and former),**
2. **Mr. Mansoor Ahmed (DIN: 01806631; PAN: AKKPA7873P),**
3. **Mr. HariharanVeeraraghavan (DIN: 03163235; PAN: ABQPV9123N),**
4. **Mr. Harjit Singh (DIN: 06629572; PAN: ADLPS4992B),**
5. **Mr. Sandeep Sethi (DIN: 01541853; PAN: AQBPS6934N),**
6. **Mr. Brij Mohan Mahajan (DIN: 00031819; PAN: AAWPM1136F),**
7. **Mr. Sunil KantiKar (DIN: 00476819; PAN: AEQPK2126K),**
8. **Mr. Virendra Singh (DIN: 01683025; PAN: AIJPS8703K),**
9. **Mr. Kanwar Deep Singh (PAN: ACCPS3258G),**
10. **Mr. R. P. Chhabra (PAN : ADOPC4099E),**
11. **Smt. Harpreet Kaur (PAN: ABCPK6456B) and**
12. **Mr. Ravinder Singh (PAN: ALHPS5680C)**

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1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had received a reference dated September 18, 2013 from the Registrar of Companies ("RoC"), Punjab and Chandigarh *inter alia* stating that the company, **Alchemist Capital Limited** (hereinafter referred to as "**ACL**" or "the **Company**") had raised Rs.165 crore during the year 2006 and that the funds were raised from 28,000 investors spread throughout the Country. The RoC had remarked that such wide subscription was not possible without making the offer, directly or indirectly, to the public. RoC also shared with SEBI the list of persons to whom 'preferential shares' were issued and observed that the issue was 'public' in nature.

2. On the basis of such reference, SEBI conducted an examination into the affairs of the Company related to the alleged mobilization of public funds through issue of securities. On completion of the examination, SEBI, vide an **Order dated December 08, 2014** ("the **interim order**") alleged that the Company had made an offer and allotted **Redeemable Preference Shares** ("**RPS**") during the financial years 2003-2004, 2004-2005, 2005-2006 and 2006-2007 in contravention of the provisions of the Companies Act, 1956 (sections 56, 60 read with section 2(36) and 73) and the SEBI (Disclosure and Investor Protection) Guidelines, 2000 ("the **DIP Guidelines**") read with regulation 111 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("the **ICDR Regulations**"). In view of the violations, to ensure that only legitimate fund raising activities are carried on by ACL and no investors are defrauded, SEBI issued the following directions against the Company, its directors and former directors.

"..... .....

7. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11, 11(4), 11A and 11B of the SEBI Act and Clause 17 of the DIP Guidelines read with Regulation 111 of the ICDR Regulations, hereby issue the following directions –

i. *ACL shall not mobilize any fresh funds from investors through the Offer of Redeemable Preference Shares or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;*

ii. *ACL and its present Directors, viz. Shri Mansoor Ahmed (DIN: 01806631; PAN: AKKPA7873P), Shri HariharanVeeraraghavan (DIN: 03163235; PAN: ABQPV9123N), Smt. Harpreet Kaur (PAN: ABCPK6456B), Shri Sandeep Sethi (DIN: 01541853; PAN: AQBPS6934N) and Shri Harjit Singh (DIN: 06629572; PAN: ADLPS4992B) alongwith its past Directors, viz. Shri Brij Mohan Mahajan (DIN: 00031819; PAN: AAWPM1136F), Shri Sunil KantiKar (DIN: 00476819; PAN: AEQPK2126K), Shri Virendra Singh (DIN: 01683025; PAN: AAWPM1136F), Shri Kanwar Deep Singh (PAN: ACCPS3258G), Shri Ravinder Singh (PAN: ALHPS5680C) and Shri R. P. Chhabra (PAN: ADOPC4099E), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;*

iii. *ACL and its abovementioned past and present Directors, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till further directions;*

iv. *ACL shall provide a full inventory of all its assets and properties;*

v. *ACL's abovementioned past and present Directors shall provide a full inventory of all their assets and properties;*

vi. *ACL and its abovementioned present Directors shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the Offer of Redeemable Preference Shares, without prior permission from SEBI;*

vii. *ACL and its abovementioned present Directors shall not divert any funds raised from public at large through the Offer of Redeemable Preference Shares, which are kept in bank account(s) and/or in the custody of ACL;*

viii. *ACL and its abovementioned present Directors shall furnish complete and relevant information in respect of the Offer of Redeemable Preference Shares (as sought by SEBI letters dated October 1, 2013; February 20, 2014 and March 27, 2014), within 21 days from the date of receipt of this Order.*

8. *The above directions shall take effect immediately and shall be in force until further orders.*
....."

3. The interim order was issued without prejudice to the right of SEBI to take any other action that may be initiated against the Company and its past and present Directors (collectively referred to as "**noticees**") in accordance with law. The interim order allowed the noticees to file their response and also intimate whether they desired to avail an opportunity of personal hearing.

4. The **Company**, vide letter dated **April 16, 2015**, submitted its reply, *inter alia* making the following submissions :

a) The reply is in respect of the **Company** and its present directors **Mr. Mansoor Ahmad** and **Mr. HariharanVeeraraghavan**. (*the two individuals are also noticees covered under the interim order*)

b) Individuals Mr. Sandeep Sethi, Mr. Harjit Singh and Smt. Harpreet Kaur named as directors in the interim order have already resigned from the respective posts prior to the passing of the interim order and that the requisite documents evidencing their resignations were said to be annexed.

c) The Company is a public limited company incorporated under the provisions of the Companies Act, 1956 and is registered as a Non-Banking Financial Company (NBFC) with the Reserve Bank of India (RBI). The Company is *inter alia* engaged in the business as an investment company and for the said purpose it invests in, acquires, underwrites, subscribes for and holds shares, bonds, stocks etc.

d) The Company was incorporated as *Toubro Holdings Ltd.* on December 13, 2000 and obtained a certificate of commencement of business on January 23, 2001. On December 26, 2005, the Company obtained a Certificate of Registration with the RBI to commence business as an NBFC. The name of the company was changed to its present name in the year 2008 and a fresh Certificate

of Registration pursuant to the name change was issued to the Company on August 11, 2008. RBI governs the conduct of the Company under the RBI Act.

e) On January 03, 2013, the Company received two SCNs dated December 28, 2012 from the RoC Chandigarh alleging *inter alia* that the Company was in violation of sections 60, 67 and 73 of the Companies Act. The allegation was that the Company issued shares to more than 50 persons violating the provisions relating to issuance of prospectus and listing contained in section 60, 67 and 73 of the Companies Act. The Company had challenged the said SCNs before the Hon'ble High Court of Punjab and Haryana on the ground that the provisions of section 60, 67 and 73 are inapplicable to the Company being an NBFC registered with RBI. The Hon'ble High Court had stayed the SCNs on noting its contention. The RoC had filed a detailed counter affidavit taking a stand that as the Company was an NBFC registered with RBI, no action has been taken for alleged violations of sections 60, 67 and 73. In view of the stand taken by the RoC, the Hon'ble High Court passed a final judgment dated October 31, 2014 with the following order:

"*9. Although the prayer in the petition pertains to a challenge to the show cause notice issued under section 60 and 67(3) read with section 73 of the Companies Act, no orders are necessary in the light of the reply of the State that they are not taking any action pursuant to the notice since the petitioner is a Non-Banking Financial Institution to which the said provisions will not be applicable.*"

f) While taking the above stand, the RoC has also forwarded the reference regarding the alleged violation of the very same provisions to the SEBI by way of the communication dated September 18, 2013. Copy of the said communication has not been provided to the Company till date by SEBI or by RoC

g) The representation made by the RoC was not only malafide but also contrary to its stand before the Hon'ble High Court.

h) SEBI request dated October 01, 2013 to the RoC seeking details regarding the RPS and RoC's response dated October 15, 2013 have not been made available to the Company.

i) The Company vide letter dated October 14, 2013 responded to the SEBI letter dated October 01, 2013 and had pointed out that it is an NBFC and sought 4 weeks' time to provide a detailed response.

j) The Company, without prejudice to its rights, submitted detailed information vide its letter dated November 07, 2013 submitting certain documents including Memorandum and Articles of Association, Copies of Annual Returns, details of directors, etc

k) With respect to the SEBI's letter asking for a copy of the certificate of registration as an NBFC, the Company sent a response dated March 03, 2014 supplying the requisite information along with copy of sample pamphlet form and application form, Form-23 filed with RoC for issuance of RPS and Form-2 for issuance of RPS.

l) SEBI vide another letter dated March 27, 2014 sought information with respect to list of allottees and their details and that the Company requested for 60 days time to provide the information. No further communication was exchanged between the Company and SEBI thereafter. It was understood that the RoC had already forwarded a CD containing the names and details of allottees to SEBI and therefore the Company did not feel the requirement to send further information assuming that SEBI was satisfied. However, on service of the interim order, the Company learnt that SEBI had passed order against itself and its directors as well as former directors without affording any opportunity of personal hearing.

The Company submitted that the Order passed by SEBI is completely untenable in the eyes of law and is thus liable to be immediately recalled for the following reasons :

I) <u>Reference by RoC Chandigarh is malafide:</u>

i. The interim order is a nullity in law as the same has been passed on a reference made by the RoC to investigate the alleged violations of section 60, 67 and 73 of the Companies Act notwithstanding the stand of RoC that the above provisions are inapplicable to the Company as it is a registered NBFC under the RBI Act. This stand was categorically taken by the RoC in its counter affidavit filed before the Hon'ble High Court of Punjab and Haryana.

ii. The RoC cannot cause another roving and fishing inquiry into the affairs of the Company having failed in its earlier attempt at prosecuting the Company.

iii. The Hon'ble High Court has already struck down the said SCNs issued by the RoC by accepting the statement of the RoC that the said provisions are inapplicable to the Company. Therefore, on a matter of interpretation, SEBI cannot be allowed to take a different view in the matter. The Hon'ble High Court has put its imprimatur by accepting the statement made by the RoC and as such the action of SEBI in re-agitating the same issue amounts to constructive res-judicata. In any event, a finding of the Hon'ble High Court that the provisions of sections 60, 67 and 73 are inapplicable to the Company is

binding on SEBI and any contrary interpretation would amount to contempt of Court's Orders.

iv. The emergent facts clearly show that the actions of the RoC are completely malafide in so far as they are continuously targeting the Company as part of their malafide designs. The RoC being an instrumentality of the State is required to act in a fair, unbiased and bonafide manner. Unfortunately, the RoC seems to have abdicated their solemn duty and have adopted unscrupulous means to target the Company.

II) <u>Order passed without hearing the Company and its directors - violation of natural justice</u>

i. The interim order has been passed in a mechanical manner without affording the Company or its directors an opportunity of being heard. SEBI has passed sweeping orders without hearing, 8 years after the issuance of RPS during which period SEBI and Company had exchanged extensive correspondence.

ii. The interim order is thus a gross violation of the principles of natural justice.

iii. Neither RoC nor SEBI have till date provided the alleged reference made by the RoC to SEBI and correspondence dated October 01, 2013, October 15, 2013 and October 29, 2013 which forms the basis for passing of the interim order. It further appears that RoC annexed certain documents along with their reference to SEBI, which have not been provided to the Company till date.

iv. The procedure adopted by SEBI is completely perverse as it has already pre-judged the entire issue rendering the process of show cause an empty formality. Vital rights of the Company have been affected without affording an opportunity of being heard and that SEBI has ignored the *proviso* to section 11(4) of the SEBI Act which requires an opportunity of hearing to the concerned person.

v. The Company has cooperated with SEBI and has provided adequate response and therefore SEBI could not have held that the Company defaulted in providing information.

III) <u>No urgency in the matter - interim order un-necessary</u>

i. SEBI has failed to appreciate that the Company has not committed any irregularity nor has violated any provisions issued by SEBI or RBI.

ii. The entire basis of the Order is flawed for the reason that the Company has not issued any RPS since the year 2006. The interim order has been passed in a lackadaisical and hurried manner in the guise of investor protection. The admitted case of SEBI is that alleged public issue took place in the year 2003, 2004, 2005 and was made more than eleven years ago and there was no occasion for SEBI to pass an ex-parte interim order at such a belated stage.

IV) <u>No violation of extant laws:</u>

i. The interim order has been passed without appreciating the legal position clearly enunciated in the provisions of the Companies Act. The Company is an NBFC duly registered with the RBI and is carrying on operation pursuant to the said registration. However, SEBI has erroneously found that the actions of the Company are *prima facie* violative of the Companies Act and directions under sections 11, 11(4) 11A and 11B of the SEBI Act read with DIP Guidelines and ICDR Regulations are required to safeguard the interest of investors.

ii. The offer made by the Company of RPS was made on a *'private placement basis*'. As such the provisions applied by SEBI in the order do not apply to it.

iii. The interim order is wholly fallacious in so far as it applies the provisions of sections 56, 60 and 67 of the Companies Act to the Company. SEBI ought to have appreciated that the Company is an NBFC duly registered with the RBI and the same exempts it from the applicability of section 67(3) of the Act. In so far as it relates to NBFCs the said issue with respect to 'public offer' is to be governed by guidelines to be issued by SEBI in consultation with RBI. No such guidelines had been issued by the SEBI or RBI at the relevant time. Therefore, *ex-facie* the provisions sought to be invoked by SEBI are not applicable to the Company and no action for alleged violation of the same can be taken against the Company.

iv. SEBI had in an advertisement dated November 15, 2013 stated that "*Schemes/Arrangements made or offered by Cooperative Societies, deposits accepted by NBFCs ..... are outside the purview of SEBI's jurisdiction*". In the light of SEBI's own stand that NBFCs are outside the purview of its jurisdiction, the interim order ought to be recalled immediately.

v. The Company neither issued any prospectus in relation to shares nor has it offered the same for public subscription The requirement of provisions relating to registration with a

stock exchange for listing company's securities is relatable to a case where offers or invitation for subscription to shares are made to the public. The Company has not made any offer to the public. Without prejudice to the Company's other contentions, the issuance of shares was not calculated to result, whether directly or indirectly, in shares becoming available for subscription or purchase by persons other than those receiving the offer or invitation. The offer made was otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

vi. Even the RBI has taken the view that section 67 of the Companies Act does not apply to NBFCs as would be evident from the following:

- The Financial Stability Report of December 2010 issued by RBI specifically records that NBFCs are exempt from the provisions of section 67 of the Companies Act and that the RBI was in the process of formulating guidelines in conjunction with the Ministry of Corporate Affairs to plug the contemporaneous regulatory gap.
- RBI issued Circulars dated June 27, 2013 and July 02, 2013 for NBFCs in the matter of private placement. It is clear therefrom that private placement has been subjected to regulatory restrictions only in 2013 and no restrictions were applicable at the time the Company issued the RPS in question. The aforesaid Circulars have amended the operation of section 67 of the Companies Act to the extent that NBFCs are also subject to the '49 person' rule which was inapplicable to NBFCs prior thereto.

vii. The aforesaid RBI Circulars do not apply retrospectively and shall apply to future issue of shares by NBFCs. The allegations raised by SEBI relate to issuance of RPS in the years 2003, 2005 and 2006. The interim order does not take into account the fact that the Circular issued by RBI clarifies the position of law that the section 67 does not apply to the Company.

viii. The Company's status as an NBFC has not been disputed by SEBI. Notwithstanding the same, SEBI has gone ahead to hold that the provisions of section 67 applies to the Company and that it failed to establish that the issue of shares was a 'private placement'.

ix. SEBI failed to appreciate that it had ample powers under section 67 (3A) of the Companies Act to issue guidelines in consultation with the RBI in respect of the offer or invitation made to the public by a public financial institution. The said provision is the applicable

provision and in the absence of any such guidelines, no directions could have been passed against the Company.

x. SEBI did not investigate the issue and erroneously placed the entire burden on the Company. The Hon'ble SAT in *Toubro Infotech& Industries Limited vs. SEBI (Appeal No. 141/2003)* has held that the onus to establish that a particular issue is intended to be a public issue lies upon SEBI. This position of law is further strengthened by a combined reading of the aforesaid judgment and the RBI Circulars. The interim order wrongly shifts the entire onus on the Company and holds that the Company failed to provide any cogent material to prove their case.

xi. SEBI failed to appreciate the scope of its powers while administering the provisions of the Companies Act in respect of companies mentioned in section 55A of the Companies Act. While acting so, SEBI is only empowered to act in terms of the Companies Act and not to pass directions under the SEBI Act. That being the position, SEBI could not have issued directions against the Company under the provisions of the SEBI Act.

xii. SEBI has failed to appreciate that under section 55A of the Companies Act, SEBI has limited jurisdiction which has been granted only qua those companies which intend to get their shares listed on any recognized stock exchange and the same can only be exercised in terms of the powers which are provided under the various sections as specified in section 55A.

xiii. SEBI has erred in relying upon the observations made in the decision rendered in *Sahara India Real Estate Corporation Limited and others vs. SEBI and others (Civil Appeal No. 9813/2011)*. The decision in *Sahara* is distinguishable on facts as *Sahara* was never registered as NBFC. Further, in paragraph 95 of the Sahara order, it was observed "*A public company can escape from the rigor of provisions, if the offer is made by companies mentioned under Section 67(3A), i.e. by public financial institutions specified under section 4A or by non-banking financial companies referred to in section 45I(f) of the Reserve Bank of India Act, 1934.*"

xiv. It is clear that the Hon'ble Supreme Court has consciously held that the applicability of section 67(3) of the Companies Act cannot be extended to NBFCs. Therefore, reliance placed on the judgment in Sahara was misplaced. Even otherwise, the aforesaid judgment was rendered in the year 2012 and can only be applied prospectively.

xv. The interim order severely hampered the operations of the Company in as much as the same is a running concern and its day to day operations have been hampered by putting

unnecessary fetters and restrictions. Stringent directions have been passed against the directors without proper adjudication of the case. There was no urgency in the matter and SEBI ought to have given an opportunity to the Company and its directors to put forth their case before passing the order.

xvi. As far as the observations made in the interim order with respect to the allotments dated August 30, 2008, December 31, 2004 and July 30, 2005 are concerned, it was submitted that the Company has issued RPS on private placement basis. Even though the Company was not registered as an NBFC at the time, all relevant disclosures have been made to the RBI which has thereafter granted registration certificate to the Company.

xvii. The allotments made prior to registration as well as post registration have been properly characterized by the Company and it does not lie in the mouth of SEBI to question the same. Without prejudice to the above, it is submitted that the Company has redeemed a substantial portion of the aforesaid allotments.

xviii. Allotments made more than 12 years ago more so in the absence of any complaints from shareholders cannot be the basis of the order.

The Company and its directors requested SEBI to recall the order and to suspend the direction which directs the Company and its directors to make disclosures with regard to their assets.

5. <u>Reply of Mr. Harjit Singh (received in SEBI on April 20, 2015)</u>:

a) The entire basis of the order against the noticee was that he has been characterized as a 'present director' of the Company whereas the noticee had resigned with effect from July 15, 2014.

b) The noticee was appointed as an Independent Director of the Company on August 19, 2013 and subsequently resigned on July 15, 2014.

c) The Company had accepted the resignation and filed Form-32 before the RoC. *Noticee enclosed documents claiming to evidence his appointment and resignation from the Company.*

d) The offending act of the Company appears to be the issuance and/or allotment of RPS between the period - August 30, 2003 to June 30, 2006 and during this period five such allotments were made by the Company on August 30, 2003, December 31, 2004, July 30, 2005, April 10, 2006 and June 30, 2006.

e) The noticee was neither a director nor a shareholders of the Company during the allotment period. Therefore, the transactions of the Company during such period cannot be deemed to be within the

knowledge of the noticee and the noticee cannot be held accountable for any alleged lapses on the part of the Company in regulatory compliances.

f) The noticee was merely an Independent Director in the Company and not in any manner responsible for the day to day management and control of the Company. The interim order has not considered the said facts and has caused grave prejudice to the noticee.

g) No role has been ascribed to the noticee and as such the noticee cannot be made vicariously liable for the alleged acts of the Company in issuing RPS in violation of the law.

h) The interim order seeks to invoke the provisions of sections 11, 11A and 11B of the SEBI Act for the alleged violations. The aforesaid provisions do not spell out that directors of a company shall be vicariously liable for the offences committed by a company. In the absence of any such provision, the interim order holding the directors of the Company *prima facie* guilty of the violations is completely without jurisdiction.

i) SEBI has the power to administer the provisions of the Companies Act by virtue of section 55A of the Companies Act in order to effectively regulate the functioning of listed companies. In doing so, the penalties must relate to the said Act and SEBI is therefore wrong in invoking the provisions of sections of SEBI Act.

j) Without prejudice, the noticee denied that the Company had committed any irregularity or violation of the Companies Act, DIP Guidelines and ICDR Regulations and as such proceedings against the Company and its directors is liable to be dropped.

k) The noticee requested that the proceedings against him be dropped and as interim relief requested for suspension of the directions passed vide the interim order.

l) The noticee also requested for documents forming part of correspondence between the Company and SEBI and those that are relied in the order.

6. <u>Reply of Mr. Sandeep Sethi (reply received in SEBI on April 21, 2015):</u>

This noticee *inter alia* submitted that -

a) The noticee was appointed as an Independent Director of the Company on January 22, 2009 upon his consent to act as a director. The noticee remained in such position till October 01, 2013 when he resigned from the post.

b) The noticee enclosed documents claiming to evidence his appointment and resignation as a director in the Company.

c) The finding that the noticee is a 'present' director in the interim order is completely erroneous.

d) SEBI ought to have verified the facts before passing sweeping directions which have not only caused economic harm but also tarnished his reputation. On this ground alone the order needs to be recalled.

e) No notices or correspondence were ever exchanged between the noticee and SEBI and it was obvious that SEBI did not send notices due to the mistaken belief that the noticee continues to be the director.

m) SEBI has demonstrated that allotment of RPS was undertaken by the Company on August 30, 2003, December 31, 2004, July 30, 2005, April 10, 2006 and June 30, 2006 and a total of Rs.165.21 crore was raised upto June 30, 2006 by the Company. What has skipped SEBI's attention was that the noticee was not a director of the Company on the said dates. Even as per SEBI's case, no allotment or issuance of RPS took place post June 30, 2006 and as such no liability for such allotments can be fastened on the noticee, who was appointed on January 22, 2009 and subsequently resigned on October 01, 2013. It is therefore clear that the undersigned could not have been involved in the alleged violations.

n) The issuance of RPS by the Company being a private placement did not in any manner offend the provisions of law, as contended by SEBI.

o) The order does not level any allegations against the noticee nor does it spell out the role of the undersigned in the commission of the alleged violations by the Company.

p) The provisions of the SEBI Act as invoked by SEBI do not provide for vicarious liability of the directors and in the absence of such statutory provisions, no vicarious liability can be fastened on the directors of the Company.

q) The noticee placed reliance on MaksudSaiyed v. State of Gujarat and others [2008 (5) SCC 668], Commissioner of Central Excise, bangalore v. Brindavan Beverages (P) Ltd. and others [2007 95) SCC 388] and Collector of Customs, Calcutta v. Tin Plate Co. of India Ltd and others [1997 (10) SCC 538]. The noticee also relied on the decision in Sunil Bharti Mittal v. CEB [Criminal Appeal No. 34 of 2015 decided on 09.01.2015], where it was held that liability of offending acts of a company can be foisted on its directors only when the applicable statute specifically provides for vicarious liability, there has to be specific act attributable to a director so as to hold such director responsible for the offending acts committed by or on behalf of the company.

r) It is settled law that penal provisions in a statute are to be strictly construed.

s) The issuance of RPS by the Company clearly constitutes a private placement and as such does not attract the provisions of section 67 and 73 of the Companies Act.

t) The Company is an NBFC and was carrying on business in terms of the certificate of commencement of business granted to it. As a result of such registration, the provisions of section 67 and 73 are inapplicable to the Company in terms of the second proviso to section 67(3) of the Companies Act.

u) Section 67(3A) of the Companies Act is the applicable provision attracted in the present case and as no guidelines existed at the time of issuance of the RPS, no liability can be fastened on the Company and its directors.

v) The noticee also referred to the RBI circulars dated 27.06.2013 and 02.07.2013 wherein the powers under section 67(3A) appear to have been exercised for the first time to plug the loopholes in the regime regulating NBFCs in India.

w) The fact that section 67(3) and 67(3A) of the Companies Act operate in different spheres has been recognised by the Supreme Court in the Sahara case.

x) The issuance of RPS by the Company was not calculated to result, whether directly or indirectly, in shares becoming available for subscription or purchase by persons others than those receiving the offer or invitation. The offer made was otherwise as being a domestic concern of the persons making and receiving the offer or invitation.

y) The noticee has at all times acted in good faith and discharged his fiduciary duties professionally and in accordance with law. The noticee being an independent director was never involved in the day to day management of the Company and therefore no liability can be fastened upon him.

z) The noticee urged SEBI to recall the interim order and drop the proceedings in respect of him.

7. <u>Reply of Mr. Kanwar Deep Singh (reply received on April 20, 2015)</u>:

This noticee *inter alia* submitted that -

a) The noticee was the initial director of Toubro Holdings Limited (*the Company was earlier known by this name*) which was incorporated with the RoC on December 13, 2000 and obtained a certificate of commencement of business on January 23, 2001. The noticee was a non-working director on the board of the said company from its incorporation till April 05, 2004, when he resigned from it. The noticee also enclosed documents (resignation letter dated April 05, 2004 and Form-32) claiming to evidence his resignation. The noticee acted in good faith and discharged his functions with utmost diligence following professional advice rendered at that time and as such cannot be made liable for the acts of the Company, even if SEBI reachs a conclusion that the Company has violated the Companies Act and the SEBI Act.

b) SEBI did not issue a single letter to the erstwhile directors to ascertain their stand and that it cannot be the case of SEBI that it was not aware that the noticee along with other erstwhile directors resigned from the company.

c) The noticee has requested for the documents that forms the basis of the interim order.

d) The inquiry admittedly commenced on the representation of the RoC and therefore *prima facie* no liability could have been fastened on the noticee who resigned on April 05, 2004.

e) As far as the noticee was concerned the allotment made on August 30, 2003 may be relevant as the allotments done on the other dates were done after his resignation as a director in the Company. The allotment on August 30, 2003 was made pursuant to a Special Resolution passed by the Board of the Company dated July 21, 2003 for issuance of RPS on private placement basis.

f) The impugned allotment was made pursuant to specific professional advise that the issuance of such RPS on private placement would comply with the provisions of the Companies Act, 1956.

g) As the Company was an unlisted company, there was no requirement of any compliance of section 73 of the Companies Act and the SEBI Act and regulations framed thereunder.

h) The reliance on the judgment in the *Sahara* case is misplaced and it is impossible to contend that the said decision would operate retrospectively to the transactions which took place almost a decade ago.

i) SEBI seeks to invoke the principle of vicarious liability against the noticee and other past/present directors. There are no specific allegations against the noticee that he was responsible for the day to day management and control of the company at the relevant time. No specific role has been ascribed to the noticee or against the other directors and therefore the invocation of the provisions of the SEBI Act and passing interim directions against the noticee and the other directors is completely unwarranted and renders the order to be recalled.

j) The order has been passed without hearing the Company or its directors and thus amounts to a gross violation of the principles of natural justice. There was no need to pass interim order as the same related to the year 2003.

k) The noticee requested SEBI to discharge him from the proceedings and further requested SEBI to provide relevant documents forming basis of the order.

8. <u>Reply of Mrs. Harpreet Kaur</u>:

This noticee made the following submissions vide reply received on April 20, 2015 -

a) The noticee was an initial director of the Company and was named as such in the Articles of Association of the Company filed with ROC. She tendered her resignation vide letter dated February 28, 2001. Form-32 evidencing her resignation was also filed.

b) She has been wrongly described as a 'present director' despite the fact that she had resigned from the said post on February 28, 2001. The notice has been issued in error as the noticee has no role to play in the business and management of ACL.

c) The allegations emanate from the allotment of RPS issued by the Company in the years 2003, 2004, 2005 and 2006. During such period, the undersigned had ceased to be director.

d) The noticee refuted the allegations and submitted that order cannot seek to impose any obligations or liabilities on the noticee in view of the fact that she was not a director during the relevant time.

e) The interim order proceeds on an erroneous basis against the noticee and the same is without jurisdiction and authority of law.

f) The noticee therefore requested SEBI to recall the order in respect of her.

9. Mr. R.P. Chhabra, vide his letter received on April 20, 2015, *inter alia* made the following submissions :

(a) The noticee is 75 years old and has retired from Punjab National Bank.

(b) The service of the noticee was not pensionable and after his retirement, his full time vocation are his investments in the stock market. The noticee who is retired has the duty to look after his wife, daughter and grand-daughter, and does not have other source of income except his investments in the stock market.

(c) The noticee was appointed as a director in the Company on February 28, 2001. During his tenure, the noticee was a non-working/independent director without any shareholding in the Company. The noticee did not draw any remuneration and had no role in the affairs of the Company.

(d) On April 05, 2004, the noticee resigned from his position as a director of the Company. Copies of resignation letter and Form-32 were filed.

(e) On coming to know of the interim order passed by SEBI against the Company and its past and present directors, the noticee requested the Company to provide copies of communication exchanged between SEBI and company along with interim order.

(f) The order is illegal and bad in law as it has arbitrarily prohibited the noticee from accessing and dealing in the securities market, which is the means of noticee's livelihood being a retired senior citizen.

(g) The noticee was never called upon by SEBI to explain his stand and a completely erroneous procedure has been followed by SEBI in passing the order against ex-directors.

(h) The *prima facie* observations contained in the interim order do not raise any specific allegations against the directors of the Company nor does it attribute any special knowledge of the alleged violations by the Company. Penal statutes must be construed by judicial authorities in the strictest possible terms and vicarious liability can only be fastened on directors in case their role is clearly visible or ascribed in the allegations levelled by a complainant. The noticee reiterated that he was appointed as a non-working/independent director on February 28, 2001 and resigned on April 05, 2004.

(i) During his tenure as a director, the noticee did not participate in the management and control of the Company and as such cannot be deemed to be in control or in charge of the affairs of the Company.

(j) From the allegations, only one allotment took place on August 30, 2003 and the requisite forms were filed with RoC. The said allotment was made on private placement basis and did not offend any regulatory or statutory requirement in law. The noticee has learnt that substantial redemption of the RPS allotted on August 30, 2003 was made by the Company and requested SEBI to call upon the Company to provide details of such redemption.

(k) The action of SEBI appears to be malafide and hit by delay and laches. The noticee resigned from the Company as far back as April 2004 and has not retained any documents pertaining to the period of directorship which ended over 10 years ago. SEBI has started a roving and fishing inquiry into the affairs of the Company without realizing that the individuals such as the noticee would never be able to defend themselves effectively due to lack of evidence/documents available for such old transactions.

(l) SEBI did not provide documents and the noticee was at the mercy of the Company to reconstruct his record and to effectively defend himself.

(m) Noticee requested to provide all documents and also for an opportunity of personal hearing.

10. Though the interim order was delivered on noticees, Mr. Brij Mohan Mahajan and Mr. Virendra Singh, they did not file any response. The interim order for the following noticees returned with the remark as mentioned in the table:

S. No.	Name of the noticee	Reason for non-delivery
1	Hariharan Veeraraghavan	Left
2	Ravinder Singh	No such person
3	Sunil Kanti Kar	Deceased

Subsequently, it is noted that one CS Chouhan received the interim order for Mr. Hariharan Veeraghavan on February 19, 2015. The reply of the Company was also for Mr. Hariharan Veeraghavan. Further, SEBI published a newspaper advertisement on February 18, 2015 regarding the proceedings against Mr. Sunil Kanti Kar and Mr. Ravinder Singh. It is noted that the interim order was received by Mr. S. Kar on behalf of Mr. Sunil Kanti Kar on February 11, 2015. However, no response was received from Sunil Kanti Kar/his family and no death-certificate was forwarded to SEBI. No reply was received from Mr. Ravinder Singh also.

11. The noticees were afforded an opportunity of personal hearing on April 20, 2015, when the Company and Mr. Mansoor Ahmed appeared and sought for another date of hearing. The matter was adjourned to May 08, 2015. In this hearing, noticees - Company, Mansoor Ahmed, Hariharan Veeraraghavan, Harjit Singh, Sandeep Sethi, Brij Mohan Mahajan, Kanwar Deep Singh, Harpreet Kaur, Ravinder Singh and R.P. Chhabra appeared through their authorised representatives. They had requested for copies of the documents relied upon by SEBI. It was pointed out that no such request was made on the last date (i.e. 20.04.2015) of personal hearing. However, in the interest of natural justice, a final opportunity was granted to the noticees on May 22, 2015. None appeared for noticees - Sunil Kanti Kar and Virendra Singh.

In response to the notice dated May 13, 2015 informing personal hearing on May 22, 2015, the Company requested for an adjournment that their counsel was not available on account of vacation and that the documents received from SEBI had to be examined. However, as the noticees/their counsel were clearly informed that the personal hearing afforded on May 22, 2015 would be the final opportunity and the same

was also agreed to by them, I had decided that no further adjournment would be afforded. Accordingly, the Company was informed, vide SEBI's letter/email dated May 21, 2015 that the request for adjournment was rejected and they were advised to appear on May 22, 2015 and that failure to appear would result in no further opportunity of hearing and the case would be decided on the basis of material on record. However, none of the noticees especially the noticees who appeared on May 08, 2015 appeared on May 22, 2015. As informed, the hearing opportunity was closed and the matter is taken up for consideration on merits on the basis of material available on record.

12. Pursuant to the above, it is noted that Hon'ble SAT had vide Order dated June 09, 2015 (in Misc. Appln. No. 164/2015 and Appeal No. 224/2015 (*R. P. Chhabra vs. SEBI*) allowed **Mr. R.P. Chhabra** to withdraw his appeal (*which challenged the interim order passed against him*) after taking on record the statement of SEBI. The relevant portions of the said Order are reproduced below:

> *" 2. ……. Counsel for SEBI fairly states that opportunity of hearing was already afforded to the appellant on two occasions and on the third occasion the appellant remained absent. Counsel for SEBI further states that one more opportunity of hearing would be given to the appellant within a period of 4 weeks from today and an order would be passed within 4 weeks thereafter. Statement made by counsel for SEBI is accepted.*
>
> *3. In view of the aforesaid statement, counsel for the Appellant seeks to withdraw the appeal.*
>
> *4. Accordingly, the appeal is allowed to be withdrawn in the above terms with no order as to costs.*"

Accordingly, Mr. R.P. Chhabra was afforded an opportunity of personal hearing on July 06, 2015.

13. Pursuant to affording opportunity of personal hearing for Mr. R.P. Chhabra, representations were received from Company and few other noticees – Mr. Harjit Singh, Mr. Brij Mohan Mahajan, Mr. Sandeep Sethi and Mr. Virendra Singh, wherein they while referring to the opportunity afforded to Mr. Chhabra, requested SEBI for an opportunity of personal hearing for themselves on the date and time as scheduled for Mr. R. P. Chhabra. Considering the same and as a final opportunity, they were also advised to appear in the personal hearing.

14. In the personal hearing held on July 06, 2015 -

1. **Alchemist Capital Limited** and its directors **Mr. Mansoor Ahmed** and **Mr. Hariharan Veeraraghavan** were represented by Mr. Prateek Jalan, Ms. Sonia Dube and Mr. S. Chakraborty, Advocates. Mr. Prateek Jalan made oral submissions on the lines of the common reply already filed by the Company and the said directors. The above noticees were granted liberty to file additional written submissions, if any, within a period of 7 days.

2. **Mr. R. P. Chhabra** appeared in person along with Mr. V.S. Nankani, Senior Advocate, Mr. J. J. Nankani, Advocate and Ms. Gauri Rege, Advocate. Mr. V.S. Nankani, Senior Advocate made oral submissions. He also stated that the noticee faces difficulty in dematerilisation of duplicate shares received; non-credit of stock (in his demat a/c) bought and bar in liquidating his securities and that such details/submissions would be given. The said details/information were directed to be submitted within a period of 7 days.

3. Noticees, **Mr. Harjit Singh**, **Mr. Sandeep Sethi**, **Mr. Kanwar Deep Singh** and **Mrs. Harpreet Kaur** were represented by Mr. Prateek Seksaria, Advocate and Mr. Anurag Singh. Mr. Prateek Seksaria, Advocate made oral submissions on behalf of such noticees. He also undertook to file written submissions. He was advised to do so within a period of 15 days.

4. Noticees, **Mr. Brij Mohan Mahajan** and **Mr. Virendra Singh** appeared through Mr. Anurag Singh, Advocate. The Advocate requested for time for filing written submissions for Mr. Virendra Singh as the said noticee had not yet filed his reply. Liberty was granted and the Advocate was advised to file the Reply/written submissions within a period of 15 days.

15. **<u>Written submissions filed pursuant to the personal hearing</u>**:

A. The **Company,** vide its email dated July 18, 2015, filed its Written Submissions along with Annexures –

Annexure 'A' - Copy of Order in *Port Auth. of St. Paul v. Harstad*

Annexure 'B' – Anand Rathi and others vs. SEBI – Order of Hon'ble Bombay High Court

Annexure 'C' – Order dated June 20, 2002 – Hon'ble Securities Appellate Tribunal

The following were *inter alia* submitted in the Written Submissions:

(a) The Company reiterated its earlier submissions made with respect to the reference received from RoC. The Company submitted that the RoC notices (issued to the Company) were challenged before the Hon'ble Punjab and Haryana High Court, that RoC had taken a stand that sections 56, 60, 67 and 73 of the Companies Act, 1956 were inapplicable to ACL as ACL was a registered Non-Banking Financial Company (NBFC) and that the Hon'ble High Court, after noticing such statement of RoC, disposed off the proceedings.

(b) The Company submitted that the conduct of RoC in making reference to SEBI for the alleged violation of the same provisions which it has submitted to be inapplicable to ACL in proceedings before the Hon'ble High Court and on basis of which submission, the High Court has passed orders inter alia disposing of the proceedings before it, is hit by the principle of constructive res judicata and/or principles analogous thereto. The Company submitted that the issue of inapplicability of the said provisions of the Companies Act to ACL has attained finality in view of the order dated 31.10. 2014 passed by the High Court and in the circumstances, any interpretation contrary thereto would be in violation of the High Court's order and may even amount to contempt of court.

(c) The Company sought to rely upon the principle of judicial estoppel in support of its submission that RoC was not entitled to make a reference to SEBI contrary to the stand taken by it before the Hon'ble High Court and which was accepted by the Hon'ble High Court. The Company referred to the judgment of the Court of Appeals of Minnesota, United States of America (USA) in the case of *Port Authority of St. Paul vs. Harstad* where it has been held as follows:

"*Judicial estoppel prevents a party that has taken one position in litigating a particular set of facts from later reversing its position when it is to its advantage to do so. It is intended to protect the courts from being manipulated by chameleonic litigants who seek to prevail, twice, on opposite theories. Although the doctrine is reducible to a pat formula, we have recognized certain boundaries. First, the later position must clearly be inconsistent with the earlier position. Also, the facts at issue should be the same in both cases. Finally, the party to be estopped must have convinced the court to adopt its position; a litigant is not forever bound to a losing argument.*"

(d) The Company also submitted that the infractions alleged in the order date back to the year 2006 and that it had not issued any RPS for the last nine years. In the circumstances, it was submitted that there was no urgency or exigency to pass the ex parte directions against the Company and its directors.

(e) The Company submitted that NBFCs registered under the RBI Act are outside the purview of sections 56, 60, 67 and 73 of the Companies Act, 1956 by reason of second *proviso* to section 67(3)

which makes the deeming fiction of any placement in excess of 50 persons being a public issue contained in the first proviso to the said sub-section inapplicable to NBFC's and further by reason of sub-section (3A) which makes NBFC's subject to a separate regime/set of norms/guidelines to be specified by SEBI in consultation with RBI. It is submitted that insofar as an entity is registered as an NBFC, a proper interpretation of section 67(3) and (3A) of the Companies Act, 1956 implies that the number of persons to whom placements are made is entirely irrelevant.

(f) The above interpretation is confirmed by a number of contemporaneous documents placed on record by ACL along-with its reply dated 16.4.2015 namely,

(i) an advertisement dated 15.11.2013 issued by SEBI clarifying that "*Schemes/Arrangements made or offered by Cooperative Societies, deposits accepted by NBFCs…Are outside the purview of SEBI's jurisdiction*"

(ii) Financial Stability Report of RBI dated December 2010, which specifically records that NBFC's are exempt from the provisions of Section 67 of the Companies Act, 1956 and that RBI was in the process of formulating guidelines to plug such regulatory gap

(iii) Circulars dated 27.6.2013 and 2.7.2013 by RBI which were issued in furtherance to such intention to regulate and extended the 50 person rule to NBFC's and placed further restrictions on private placements by NBFC's prospectively. It is submitted that no such guidelines existed prior to issuance of the said circular by Reserve Bank of India.

(g) The Company also referred to the following observation made in the Order of the Hon'ble Supreme Court in the Sahara case: "…*A public limited company can escape from the rigor of provisions, if the offer is made by companies mentioned under Section 67(3A), i.e. by public financial institutions specified under Section 4A or by non-banking financial companies referred to in Section 45I(f) of the Reserve Bank of India Act, 1934*.".

(h) The Company further submitted that the contemporaneous law cast the onus on SEBI to establish that a particular issue was a public issue even in case of non-NBFC companies. The following portion from the judgment of the SAT in *Toubro Infotech & Industries Ltd. vs. SEBI* (Appeal No. 141/2003) reported in (2005) 3 Comp LJ 305 (SAT) was referred to:

"*35. We hold that the paramount test is that no offer or invitation shall be treated as made to the public, unless it can be shown in the facts and circumstances of a particular case that it has been calculated to a result directly or indirectly in the shares or debentures becoming available for subscription other than to those receiving the offer or invitation. In other words, there must be a design or intention on the part of the company by its conduct which results in a gatecrasher accepting the offer or invitation.*

35.1 It must be established –

(a) that there was a calculated offer on the part of the company to bring in an uninvited guest to subscribe to the debenture;

(b) that persons other than those receiving the offer or invitation had, in fact, actually subscribed to the offer.

35.2 If these two conditions are fulfilled, then no amount of camouflage in the letter of offer can make a public issue into one of a private issue. In this regard, we have given anxious consideration to the facts and circumstances of the case emanating from the impugned order. Certainly, SEBI could have done a better job by examining during enquiry one or two subscribers to determine whether they were invited or not. That would have been a clinching proof to hold that a public issue was sought to be brought out in the guise of a private issue. The reasons given by SEBI for holding it as a public placement is, strictly speaking, not in accordance with law. As expressed by us, there is no bar on fulfilling certain conditions for a company paying commission to an agent in a public issue. SEBI was in error in holding that mere payment of commission to an agent would make an issue public. SEBI also did not put enough materials in the impugned order to prove that the company had gone in for a public issue. SEBI got carried away by the statements of disgruntled commission agents and the letter from Kolkata Police. Accordingly, we hold from the materials on record that it is not possible to state that the two issues were public issues in the absence of any proper enquiry."

(i) According to the Company, applying the above ratio in the case of Toubro Holdings, it would appear that the SEBI has failed in the instant case to place sufficient material to justify its conclusion that the issue of redeemable preference shares by the Company amounted to public issue and did not satisfy the conditions of private placement.

(j) The Company contended that SEBI did not place any document or testimony on record to prove that there was a calculated offer on the part of the company to bring in an uninvited guest or that any person other than those to whom the offer had been made, has in fact subscribed to the offer. Therefore, the interim order does not contain sufficient justification to arrive at the conclusion that the redeemable preference shares issued by ACL were in the nature of public issue and consequently, ACL had violated applicable provisions of the Companies Act.

(k) The Company submitted that its present directors Mr. Hariharan Veeraraghavan and Mr. Mansoor Ahmed were appointed on August 5, 2009 and January 22, 2010. They were not directors of the Company when the alleged infractions took place and were appointed to the board almost 4 years after 2006 when the last allotment took place.

(l) The Company also submitted that the Hon'ble Supreme Court in the case of *Sunil Bharti Mittal vs. CBI (2015) 4 SCC 609* that a director of a company can be held liable for the alleged

violation/offence committed by the company only if (a) there is sufficient incriminating evidence against the said director coupled with criminal intent; or (b) the statutory regime attracts the doctrine of vicarious liability. According to it, the interim order shows that neither of these conditions are met qua the said two present directors.

(m) The Company submitted that the Hon'ble High Court of Bombay and Hon'ble SAT (*Anand Rathi vs. Securities and Exchange Board of India (2002) 1 Mah LJ 522; Videocon International Ltd. vs. SEBI, SAT (Order dated 20.6.2002)*) have interpreted that directions under sections 11(4) and 11B the SEBI Act, are preventive and remedial as opposed to punitive in nature. Therefore, an order of injunction against the said present directors from accessing the securities market in their personal capacity and/or issuing prospectus in respect of another company, may not be said to be either preventive or remedial in nature in as much as the personal portfolio of such directors is completely *de hors* any alleged violation committed by ACL and moreover, restraint upon their operating their personal accounts is not in any way relatable to the avowed purpose of these provisions to protect the interests of investors.

B. Mr. Harjit Singh, vide email dated July 21, 2015, stated that his previous letter (dated July 19, 2015) may be treated as cancelled as it was devoid of certain additional facts which have occurred to him now. He had enclosed his final submissions dated July 21, 2015 as per liberty granted in the personal hearing held on July 06, 2015, wherein he has submitted *inter alia* as follows:

(a) the noticee is a law abiding senior citizen of this country who has served in the Indian Army as an officer from 22.9.1974 to 1.11.2008 and remained re-employed as a Colonel (selection grade) in army from December 2008 to 28.10.2012.

(b) he was appointed as an Independent Director of ACL on 19.08.2013 and subsequently resigned from directorship with effect from 15.7.2014 after a short period of 11 months or so. Being in army service and even otherwise, the noticee submitted that he was not even remotely affiliated or connected to ACL prior to August 2013. He was neither a director nor a shareholder during the allotment period or on the dates when allotments were done as per the interim order. Therefore, such transactions were not deemed to be within his knowledge nor can he be held accountable for the alleged lapses.

(c) The noticee neither signed any financial document of ACL nor has ever been a shareholder of any company in his lifetime so far.

(d) The noticee has never attended any board meeting of ACL held so far nor has ever been called to attend to any meetings whatsoever.

(e) The noticee had resigned quite early due to his non-involvement with ACL as well as his inability to attend to any issues of ACL due to his wife's serious disease i.e. Ovarian Cancer 3C detected in August 2013 for which she is still undergoing treatment.

(f) The Company had accepted his resignation filed the requisite Form Dir-12 (*particulars of appointment of directors and KMP and changes among them*) before the RoC, and that a copy of the same was enclosed with submissions. The noticee also annexed copy of Form-32 regarding his appointment as a director of ACL on 19.8.2013. As ACL as well as RoC have confirmed the same, he stated that he should not be considered as a present director in ACL anymore.

(g) It is settled law that no action can be maintained against a Director in his individual capacity unless and until there are specific allegations against the said Director with regard to his role in the transaction or the statute specifically provides for vicarious liability. [*Sunil Bharti Mittal vs. CBI, (2015) 4 SCC 609*]. According to the noticee, no allegations have been levelled in the interim order against the noticee to warrant the directions passed in the interim Order. Furthermore, it is also not the case that the statutory provisions in question provide for vicarious liability of an ex-director who had no role whatsoever in day to day affairs of the company. The noticee contended that he cannot be penalized for merely being a Director of ACL.

(h) The noticee submitted that though SEBI has the power to administer the provisions of the Companies Act, 1956 by virtue of section 55A of the Companies Act, SEBI cannot invoke the provisions under the SEBI Act in order to impose penalties as provided in the SEBI Act while administering the provisions of the Companies Act, 1956. While SEBI is administering the provisions of the Companies Act, 1956 and *prima facie* finds violations of the said Act, the penalties must relate to the said Act only and therefore, SEBI is wrong in invoking the provisions of S. 11, 11A and 11B of the SEBI Act in the present case.

(i) The noticee contended that the Hon'ble Bombay High Court and Hon'ble SAT have held that the provisions of section 11B of the SEBI Act are preventive and not punitive in nature. [*Anand Rathi vs. Securities and Exchange Board of India (2002) 1 Mah LJ 522; Videocon International Ltd. vs. SEBI, SAT (Order dated 20.6.2002); Sterlite Industries (India) Ltd. vs. Securities and Exchange Board of India SAT (Order dated 22.10.2001*)]. The noticee contended that passing severe restrictions on him from accessing the securities market and/or from dealing with securities purchased from his own funds, cannot be said to relate to or sub-serve the interests of investors of ACL. It is not as if these shares or securities were purchased from the proceeds of subscription to shares by these investors or that dealing in such securities would defeat or endanger the interests of these investors.

(j) The impugned order severely hampers the livelihood of the noticee by putting unnecessary fetters upon his ability to deal in the stock market. The noticee is a senior citizen and has invested sums in the stock market from his own funds. The said funds have nothing to do with ACL and as such no fetters ought to have been placed on the same. Further, the impugned Order has caused grave embarrassment to the noticee whose reputation and goodwill has been severely tarnished as a result of being penalized by SEBI. Even the mutual funds, in which the noticee is merely a second holder with his spouse and son who are the actual investors & primary account holders, have also been locked due to the said impugned Order. Thus, the impugned order also severely hampers the livelihood of the family members of the Noticee.

According to the noticee, no case was made out against him and therefore requested that the directions contained in the impugned order may be vacated and proceedings be dropped against him.

C. Mr. Sandeep Sethi, vide email dated July 21, 2015 forwarded his Written Submissions, *inter alia* stating that –

(a) He was appointed as an Independent Director on January 22, 2009 and resigned on October 01, 2013. Therefore, none of the allotments mentioned in the interim order relate to the period when he had any interest whatsoever in the Company.

(b) The reference to him as a 'present director' in the interim order is completely misplaced and contrary to the records.

(c) During his tenure as a director, he was an independent director having no role in the day to day affairs or decision making in the Company.

(d) There is not a single allegation against him in the interim order.

(e) The provisions of the SEBI Act, as invoked in the interim order, do not provide for vicarious liability of directors. In the absence of statutory provisions, no vicarious liability can be fastened on the directors for the alleged violations by the Company.

(f) This noticee stated that he places reliance on the case laws of *Maksud Saiyed v. State of Gujarat, Commissioner of Central Excise vs. Brindavan Beverages (P) Ltd. and Collector of Customs vs. Tin Plate Co. of India Ltd.*.

(g) The provisions of the SEBI Act invoked in the order are preventive and not punitive in nature. Hence, the directions preventing him from dealing with his personal securities is contrary to the purpose for which sections 11, 11A and 11B of the SEBI Act were enacted. He placed reliance on the judgments of Hon'ble Bombay High Courts in the matter of *Anand Rathi vs. SEBI* {(2002) 1 Mah LJ 522} and that of Hon'ble SAT in the matters of *Videocon International vs. SEBI* (dated June 20, 2002) and *Sterlite Industries* vs. SEBI (October 22, 2001).

In view of his submissions, the noticee requested that the present proceedings against him be dropped and the directions passed against him (vide the interim order) be recalled.

D. Mr. Brij Mohan Mahajan, vide email dated July 21, 2015 forwarded his Written Submissions, wherein he has submitted that –

(i) He was appointed as an Independent Director of the Company on April 03, 2004 and subsequently resigned with effect from March 20, 2009.

(ii) There is no allegation against him in the interim order.

(iii) As an independent director, the noticee had no role in the running or management of the Company. Therefore, he cannot be foisted with the liability for alleged contravention of provisions of the Companies Act and SEBI Act, which do not provide for strict vicarious liability of independent directors even where no specific role is attributed to them.

(iv) The noticee placed reliance on the concept of vicarious liability as laid down by the Hon'ble Supreme Court in catena of judgments in the context of legislations such as Negotiable Instruments Act, 1881, which specifically provide for vicarious liability.

(v) He also referred to the case law of Sunil Bharti Mittal vs. CBI.

(vi) He also takes the plea that while administering the provisions of the Companies Act, SEBI cannot invoke provisions of the SEBI Act to impose penalties.

(vii) He denied committing any irregularity of violations of the Companies Act, 1956 read with Companies Act, 2013 along with DIP Guidelines and ICDR Regulations as alleged and that the proceedings are liable to be dropped.

(viii) He requested that the above facts, which were not considered in the interim order, be considered and proceedings against him be dropped. He also requested for vacating the interim directions passed against him.

E. Mr. Virendra Singh, vide two separate e-mails dated July 21, 2015 forwarded his Reply and Written Submissions. I have perused the same and the summary of his submissions are as follows :

(a) He was appointed as a director of the Company on April 03, 2004 and resigned on August 17, 2010. During this period, he had no role whatsoever in policies/decision making in the Company.

(b) It appears from the interim order cum SCN that the alleged violation committed by the Company is in respect of issue and allotment of RPS during the period – 30.08.2003 to 30.06.2006. It is settled law that a director can be held liable for the alleged violation/offence committed by the company only if (a) there is sufficient incriminating evidence against the said director coupled with criminal intent; or (b) the statutory regime attracts the doctrine of vicarious liability (*Sunil Bharti Mittal vs. CBI*).

(c) In this case, the interim order does not justify the sanctions passed against him based on material that he had role to play in the alleged violations nor is the statutory provision referred to which foists liability on directors for alleged violation of the Companies Act invoked in the present case.

(d) No role was ascribed to the noticee in the interim order for the alleged violations. The order seeks to impose vicarious liability on him for being a director of the Company for the actions/omissions of the Company.

(e) The noticee referred to the following observations made in *Sunil Bharti Mittal vs. CBI* {(2015) 4 SCC 609} :

"42. No doubt, a corporate entity is an artificial person which acts through its officer, Director, Managing Director, Chairman, etc. if such a company commits an offence involving mens rea, it would normally be intent and action of that individual who would act on behalf of the company. It would be more so, when criminal act is that of conspiracy. However, it is cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statue especially provides so.

43. Thus an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated is in those cases, where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such provision.

44. When the company is the offender, vicarious liability of the Directors cannot be imputed automatically, in the absence of any statutory provision to this effect. One such example is section 141 of the Negotiable Instruments Act, 1881. In AneeetaHada, the court noted that if a group of persons that guide the business of the company have the criminal intent, that would be imputed to the body corporate and it is in this backdrop, section 141 of the Negotiable Instruments Act has to be understood. Such a position is, therefore, because of statutory intendment making it a deeming one direction, namely, where a group of persons that guide the business had criminal intent, that is to be imputed to the body specific act attributed to the Director or any other person allegedly in control and management of the company, to the effect that such a person was responsible for the acts committed by or on behalf of the company…..".

(f) The noticee referred to the following observations made in *National Small Industries Corporation vs. Harmeet Singh Paintal* {(2010) 3 SCC 330}.

"*39 From the above discussion, the following principles emerge:*

(i) The primary responsibility is on the complainant to make specific averments as are required under the law in the complaint so as to make the accused vicariously liable. For fastening the criminal liability, there is no presumption that every director knows about the transactions.

(ii) Section 141 does not make all the Directors liable for the offence. The criminal liability can be fastened only those who, at the time of the commission of the offence, were in charge of and were responsible for the conduct of the business of the company.

(iii) Vicarious liability can be inferred against a company registered or incorporated under the Companies Act, 1956 only of the requisite statements, which are required to be averred in the complaint/ petition, are made so as to make the accused therein vicariously liable for the offence committed by the company along with averments in the petition containing that the accused were in charge of an responsible for the business of the company by virtue of their position they are liable to be proceeded with.

(iv) Vicarious liability on the party of a person must be pleaded and proved and not inferred….

(v) *The person sought to be made liable should be in charge of and responsible for the conduct of the business of the company at the relevant time. This has to be averred as a fact as there Is no deemed liability of a Director in such cases.*"

(g) The provisions of the SEBI Act (sections 11, 11A and 11B) do not spell out any vicarious liability of ex-directors of the company for alleged offences committed by the Company. This noticee

also took the plea that SEBI ought not invoke powers under the SEBI Act and that the consequences of the Companies Act should alone follow. The Hon'ble Bombay High Court (*in Anand Rathi vs. SEBI*) whilst interpreting the above provisions held that the same are preventive in nature and intended to protect the interest of investors by preventing/injuncting further malpractice/violation.

(h) Therefore, preventing the noticee from accessing the securities market or from issuing prospectus has no relation whatsoever with the avowed purpose of protecting the interests of investors of the Company.

(i) The directions contained in the interim order have severely prejudiced him and affected his income and livelihood besides bringing his reputation and name in disrepute.

(j) In view of his submissions, the noticee requested that the interim order be set-aside.

F. Mr. R.P. Chhabra, through his counsel M/s. Nankani & Associates, vide **letter dated July 21, 2015**, filed his Written Submissions. In addition to certain new submissions (which were also made in the hearing) which are mentioned below, the noticee had reiterated his earlier submissions:

(a) As per the interim order, the following are the cause/reasons for passing the ex-parte directions:

(i) to ensure only legitimate fundraising activities are carried on by ACL and that no investors are defrauded;

(ii) on account of failure on the part of the Company to provide all relevant information sought by SEBI;

(iii) to prevent the Company and all its directors from further carrying on with its fund mobilizing activity under the offer of RPS.

The noticee ceased to be a director of ACL as of April 05, 2004 and is therefore not capable of taking any actions/decisions for and on behalf of ACL or participate in any decision of ACL or its fund raising/mobilization activity. Hence, in its endeavour to prevent ACL from carrying on any fund raising/mobilizing activity, SEBI need not impose any restrictions on the present noticee as he is not a part of ACL, which is to the express knowledge of SEBI.

(b) The noticee has no access to the Company's documents and data. There was no communication whatsoever from SEBI to the noticee. There was no question of SEBI having sought any clarification/information from the noticee and consequently the question of noticee having an opportunity to clarify the position did not and does not arise at all.

(c) According to the contents of the interim order, on August 30, 2003, the Company issued 1,30,74,000 preference shares of Rs.10/- which was the only issuance made by the Company during the period of directorship of the noticee. SEBI has stated that it is not aware whether the said issuance has been made to more than 50 persons. Hence, presumption of any violation is erroneous and without any basis.

(d) The interim order was passed without affording any opportunity of hearing to the noticee. Even ACL was given notice, whereas the noticee was taken totally by surprise. The same is a contravention of principles of natural justice. SEBI failed to prove the urgency in passing the interim order against the noticee.

(e) The noticee relied on the judgment of Hon'ble Supreme Court of India in the case of *Liberty Oil Mills* reported in (1984) 3 SCC 465 and the judgment of the Hon'ble Bombay High Court in *Anand Rathi vs. SEBI*.

(f) The noticee is 75 years old and has retired from the Punjab National bank and his service was not pensionable. The noticee has a 53 year old daughter who suffers from slow mental growth and that his grand-daughter also suffers from the same problem and is studying in a special school at Chandigarh. SEBI by restricting the noticee from accessing his securities and the securities market has caused grave prejudice to him and his family who are dependent on him for their basic needs.

(g) The noticee requested SEBI to vacate the interim order as the same has caused prejudice for the past 8 months and continues to cause prejudice to him by putting a halt on his and his family's means of livelihood.

G. Mr. Kanwar Deep Singh filed his written submissions received on July 22, 2015. He reiterated his earlier submissions and additionally stated the following:

(a) The noticee is not answerable for the allotments made on 30.12.2004, 30.07.2005, 10.04.2006 and 30.06.2006 as they were made after his resignation on April 05, 2004.

(b) As far as the allotment on 30.08.2003 was concerned, his mere presence in the Board of the Company was not sufficient to foist vicarious liability upon him for alleged violation. It is settled law that in the absence of specific allegation or specific role ascribed to a director, he cannot be liable for the alleged violations committed by a company. He relied on the judgment of the Hon'ble Supreme Court in *Sunil Bharti Mittal vs. CBI*.

(c) The allotment made during his tenure as a director was made pursuant to a special resolution passed by the Board of the Company on July 21, 2003 for issuance of RPS on private placement basis.

(d) The Company neither issued any Prospectus in relation to its shares nor did it offer the same for public subscription. The issuance of shares was not calculated to result, directly or indirectly, in the shares becoming available for subscription or purchase by persons other than those receiving the offer. The offer made was otherwise as being a domestic concern of the persons making and receiving the offer or invitation. Being an unlisted company, there was no requirement of any compliance of section 73 of the Companies Act and/or provisions of the SEBI Act. Such contention is fortified by the opinion of Additional Solicitor General at the relevant time.

(e) SEBI has committed a gross error of jurisdiction by exercising powers under section 55A of the Companies Act on an unlisted company which at no point of time intended to get its shares listed on a recognised stock exchange. The judgment in Sahara case is misplaced as the same is distinguishable on facts. The noticee also contended that the said judgment cannot be applied retrospectively to an allotment made a decade ago.

Like the other noticees, Mr. Kanwar Deep Singh submitted that (i) SEBI cannot invoke the SEBI Act and regulations for violations of the Companies Act, (ii) the provisions invoked in the instant case are for preventive and remedial purposes and (iii) it is not explained as to how his dealings in securities belonging to his personal portfolio or issuing Prospectus in relation to another company be prejudicial to the interest of investors of the Company/ACL.

H. Mrs. Harpreet Kaur, vide written submissions received on July 21, 2015, reiterated her earlier submissions. She additionally contended that no role was attributed to her in the interim order and that all violations were specifically against the Company. She also submitted that the first allotment (of RPS) was made 3 years after her resignation (on 28.02.2001) from the Company. Mrs. Kaur further contended that she should not be punished for the violations that took place after her disassociation from the Company.

16. I have considered the observations and allegations made in the interim order against the Company and other noticees, their submissions and material and other documents available on record. Before

proceeding to deal with the allegations and submissions of the parties, it is necessary to refer to the observations and *prima facie* findings made in the interim order.

a) The Company was incorporated as Toubro Holdings Limited on December 13, 2000, with the RoC, Chandigarh. Thereafter, the name of the company was changed to Alchemist Capital Limited on August 11, 2008.

b) RBI had granted a Certificate of Registration ("CoR") {N. 06. 00580} to the company i.e. Toubro Holdings Limited, on December 26, 2005 to commence/carry on business of non – banking financial institution without accepting public deposits" under Section 45–IA of the Reserve Bank of India Act, 1934 ("RBI Act"). Another certificate was issued by RBI on March 04, 2009 in lieu of the earlier certificate.

c) It was noticed that the Company had issued and allotted Redeemable Preference Shares ("RPS") as per the following terms and conditions :

Plan	A	B	C	D	E	F
Issue price minimum 100 preference shares	1000					
Redemption Period	6 years	9 years	12 years	15 years	16 years	4 years
Redemption Premium	1000	2000	4100	7000	9000	500
Maturity value	2000	3000	5100	8000	10000	1500
Annualised Yield on investment	11.72%	12.40%	13.81%	14.10%	14.65%	10.25%

> *"**Who can Invest:** Individuals, Trusts, Corporate Bodies, Minors (through Guardians), Financial Institutions, Mutual Funds, HUFs and Co – operative Bodies.*
> *This Offer is being made on a private placement basis and cannot be accepted by any person other than to whom it has been offered. …"*

d) the Company has admittedly issued and allotted RPS during the Financial Years 2003-2004, 2004-2005, 2005-2006 and 2006-2007:

Year	Date of allotment	Amount Per Share (☐)	No. of Redeemable Preference Shares	No. of persons to whom Redeemable Preference Shares were issued	Total Amount Raised (☐)

2003–04	30.08.2003	10	13074000	Not available	130740000
2004–05	31.12.2004		45543680	Not available	455436800
2005–06	30.07.2005		43055650	Not available	430556500
2006–07	10.04.2006		33268600	14694	332686000
2006–07	30.06.2006		30270500	13470	302705000
Total			**165212430**	****28164**	**1652124300**
********As per information obtained from Form 2 (Form for Return of Allotment – filed by ACL with the ROC in accordance with the provisions of the Companies Act, 1956).*					

e) as per the Annual Returns submitted by the Company to the RoC, the year–wise status (from Financial Years 2007–08 to 2011–12)of the subscribed Preference Share Capital was as follows-

Sr. No.	Financial Year Ending	Issued and subscribed paid up *Preference Share Capital* (Number of shares)
1.	31.03.2007	164831970
2.	31.03.2008	163075264
3.	31.03.2009	158893054
4.	31.03.2010	146828494
5.	31.03.2011	137007994
6.	31.03.2012	108782904

f) the Auditors of the Company vide their Certificate dated November 6, 2013, had certified that upto June 30, 2006, the Company had issued 1,65,212,430 RPS of ☐10 each amounting to ☐165.21 crore. The Auditors had also certified that as on March 31, 2013, an amount of approximately ☐92.80 Crores was outstanding in respect of 9,28,01,424 RPS.

g) The interim order has noted that the Company has admittedly raised Rs.101.67 crore under its offer of RPS even prior (i.e. prior to December 26, 2005) to being registered as an NBFC with RBI. The Company has allegedly failed to provide the details of investors to whom approximately 10,16,73,330 RPS was allotted pursuant to the Company's Board Resolutions dated June 20, 2003 and November 15, 2004. The interim order observed the following:

"..... *since ACL was not registered as an NBFC with the RBI when the aforesaid allotment of 101673330 Redeemable Preference Shares was made under the Offer of Redeemable Preference Shares for the*

Financial Years 2003–04, 2004–05 and 2005–06 and having regard to the fact that it failed to co-operate with SEBI in submitting requisite information in respect of the number of allottees under the said Offer for those Financial Years 2003–04, 2004–05 and 2005–06, the same would lead me to the inescapable conclusion that the company exceeded the threshold for a private placement. I, therefore, find that the Offer of Redeemable Preference Shares was nothing but a public issue of securities in accordance with the first proviso to Section 67(3) of the Companies Act, 1956. "

It was alleged therefore that the offer and allotment of 10,16,73,330 RPS made during the Financial Years 2003–04, 2004–05 and 2005–06 was not a private placement of securities but was a public issue of RPS in terms of the first *proviso* to section 67(3) of the Companies Act, 1956.

h) Pursuant to the receipt of CoR from RBI on December 26, 2005 to carry on activities as an NBFC, the Company was found to have admittedly issued and allotted 6,35,39,100 RPS to 28,164 individuals/investors under its offer and allotment of RPS during the Financial Year 2006–07. This information is as per Form-2 filed by the Company with the RoC.

i) The interim order had alleged that though the second proviso to section 67(3) would be applicable to the Company being an NBFC, the Company was required to show that it had an intention to offer the RPS under its offer and allotment of RPS during the Financial Year 2006–07, to only those persons who received the offer, or that the offer was a domestic concern of the Company and the persons receiving the same. The interim order observed that the fact that the Company was a registered NBFC would not exempt it from proving that the offer of RPS during 2006-2007 was a private placement in accordance with the Companies Act, 1956. The interim order also observed that -

    a. *"The terms and conditions of the Offer of Redeemable Preference Shares clearly provide who can invest, viz.–Individuals, Trusts, Corporate Bodies, Minors (through Guardians), Financial Institutions, Mutual Funds, HUFs and Co – operative Bodies. Such a generalized category of investor(s) cannot be said to satisfy the condition of specificity as required under Section 67(3) of the Companies Act, 1956. Further, from the material on record, no evidence has been adduced by ACL of any prior determination of the identity of the offerees of what has been claimed by ACL in its reply dated March 3, 2014, to be the issue of Redeemable Preference Shares on private placement.*

b. *ACL has failed to provide details of individuals/investors to whom Redeemable Preference Shares was allotted vide ACL's Board Resolution dated 15.02.2006. Further, ACL has not submitted copies of the prospectus, invitation letter or offer document through which it sought subscription from the investors. I note that SEBI repeatedly sought the aforesaid information vide letters dated October 1, 2013; February 20, 2014 and March 27, 2014, which as on date, have not been submitted by ACL.* "

ii. *I find that ACL has not made available to SEBI any material or information to indicate that the Offer of Redeemable Preference Shares by ACL, which raised ₹63.54 Crores during the Financial Year 2006–07 and which resulted in subscription by 28164 individuals/investors, was intended to be an issue on private placement basis meant only for a specific or selected group of persons, as required by Section 67(3) of the Companies Act, 1956. I, therefore, find that ACL has failed to discharge the burden of proof necessitated for establishing that the Offer of Redeemable Preference Shares made by it was an issue on private placement basis in accordance with Section 67(3) of the aforesaid Act.*

4.7.3 In view of the above, I, therefore, find that the issue of 63539100 Redeemable Preference Shares, by ACL, under the Offer of Redeemable Preference Sharesduring the Financial Year 2006–07, was prima facie a public issue and not an issue on private placement basis in accordance with Section 67(3) of the Companies Act, 1956."

j) The interim order had therefore alleged that the Company failed to comply with the norms related to the public issue of securities as stipulated under sections 56, 60 read with section 2(36), section 73 of the Companies Act, 1956, the DIP Guidelines read with the ICDR Regulations.

k) The interim order mentioned that "*6. ..... the present Directors in ACL are Shri Mansoor Ahmed, Shri Hariharan Veeraraghavan, Shri Harjit Singh, Smt. Harpreet Kaur and Shri Sandeep Sethi. I also note that Shri Brij Mohan Mahajan, Shri Sunil KantiKar, Shri Virendra Singh, Shri Kanwar Deep Singh, Shri R. P. Chhabra and Shri Ravinder Singh, who were earlier Directors in ACL, have since resigned*".

17. From the observations made in the interim order, the offer and allotment of RPS by the Company can be considered broadly under two heads -

(i) Offer and allotment of 10,16,73,330 RPS for the Financial Years 2003-04, 2004-05 and 2005-06 prior to being registered as NBFC; and

(ii) Offer and allotment of 6,35,39,100RPS for the Financial Year 2006–07 post registration (*on 26.12.2005*) as an NBFC.

18. The interim order has alleged that both the above offers and allotments of RPS were public issues of RPS and were made and issued by the Company without complying with the norms related to public issues stipulated under the Companies Act and the SEBI guidelines and regulations.

19. Before proceeding, I wish to deal with a preliminary submission of the Company. The Company has submitted that on January 03, 2013, it received two SCNs dated December 28, 2012 from the RoC, Chandigarh alleging *inter alia* that the Company was in violation of sections 60, 67 and 73 of the Companies Act. The allegation in those notices was that the Company issued shares to more than 50 persons violating the provisions relating to issuance of prospectus and listing contained in section 60, 67 and 73 of the Companies Act. The Company stated that it had challenged the said SCNs before the Hon'ble High Court of Punjab and Haryana on the ground that the provisions of section 60, 67 and 73 are inapplicable to the Company being an NBFC registered with RBI. The RoC had filed a detailed counter affidavit taking a stand that as the Company was an NBFC registered with RBI, no action has been taken for alleged violations of sections 60, 67 and 73. In view of the stand taken by the RoC, the Hon'ble High Court passed a final judgment dated October 31, 2014 with the following order:

> "*9. Although the prayer in the petition pertains to a challenge to the show cause notice issued under section 60 and 67(3) read with section 73 of the Companies Act, no orders are necessary in the light of the reply of the State that they are not taking any action pursuant to the notice since the petitioner is a Non-Banking Financial Institution to which the said provisions will not be applicable.*"

The contention of the Company is that Hon'ble High Court has already struck down the said SCNs issued by the RoC by accepting the statement of the RoC that the said provisions are inapplicable to the Company. Therefore, as the Hon'ble High Court has put its imprimatur on a matter of interpretation, SEBI cannot be allowed to take a different view in the matter. As such the action of SEBI in re-agitating the same issue amounts to constructive res-judicata and any contrary interpretation would amount to contempt of Court's Orders.

I have considered the above submissions made by the Company. In the litigation referred to above, I find that SEBI was not a party. Therefore, SEBI could not have put forth its views on the interpretation of

section 67 and powers delegated to it under section 55A of the Companies Act, 1956 to *inter alia* regulate public issue of securities. The noticees shall appreciate that section 55A of the Companies Act empowers SEBI to *inter alia* administer provisions relating to public issue of securities in sections 56, 60 and 73 of the Companies Act. Further, section 11A of the SEBI Act also empowers SEBI to regulate public issue and the matters related thereto. SEBI had also framed regulations /the DIP Guidelines (*since rescinded*) to regulate *inter alia* the public issue of securities. As mentioned in the interim order, the proceedings against the Company is for the alleged non-compliance of the provisions of not only the Companies Act but also the SEBI Act and the DIP Guidelines. The very fact that SEBI was not a party to the proceedings before the Hon'ble High Court therefore does not estop SEBI from initiating action for non-compliances of the public issues norms, for which powers are delegated to SEBI under section 55A of the Companies Act, 1956. Further, the Hon'ble High Court has accepted the statement made by RoC and disposed off the proceedings and has not gone into merits of the case. The Order, therefore, was not passed after impleading SEBI or after deciding the same on merits on the manner of interpretation of the concerned provisions. The RoC itself has referred the alleged public issue of preference shares made by the Company to SEBI.

The Company has also referred to the judgment of the Court of Appeals of Minnesota, United States of America (USA) in the case of *Port Authority of St. Paul vs. Harstad*:

> "*Judicial estoppel prevents a party that has taken one position in litigating a particular set of facts from later reversing its position when it is to its advantage to do so. It is intended to protect the courts from being manipulated by chameleonic litigants who seek to prevail, twice, on opposite theories. Although the doctrine is reducible to a pat formula, we have recognized certain boundaries. First, the later position must clearly be inconsistent with the earlier position. Also, the facts at issue should be the same in both cases. Finally, the party to be estopped must have convinced the court to adopt its position; a litigant is not forever bound to a losing argument.*"

In India, it is the judgments of the Hon'ble Supreme Court and Hon'ble High Courts that have precedential value and not that of foreign judgments. Article 141 of the Constitution of India states that the law declared by the Hon'ble Supreme Court shall be binding on all courts within the territory of India. Further, it is not SEBI, an independent statutory body, which has made a statement before the Hon'ble Court that no action can be taken against the Company being an NBFC as sections 60 and 73 are not applicable to such NBFCs. Further, SEBI is empowered under section 55A of the Companies Act read

with section 11A to regulate issuance of securities by companies to the public. Therefore, the contention is not sustained.

20. I also note that the Company has contended that SEBI did not forward a copy of the RoC reference dated September 18, 2013. In this regard, it is noted that SEBI had forwarded the said reference vide SEBI letter dated May 13, 2015. SEBI also forwarded the communication of RoC dated October 15, 2013 (in response to SEBI's letter dated October 01, 2013). However, due to a typographical error the year of RoC correspondence was mentioned as 2014 instead of 2013. I also note that vide the aforementioned SEBI letter dated May 13, 2015, SEBI also forwarded to the Company–

(a) Copy of annexure to MCA's letter dated September 18, 2013 containing Form 2 – Return of allotment;

(b) Copy of Annexure I to MCA's letter October 15, 2013 containing the details of the directors of the Company including the period of their directorship.

The aforesaid letter also stated that Annexure II to the MCA's letter dated October 15, 2013 was not provided to the Company as it contained copies of Memorandum of Association, Articles of Association, Annual Returns, Form – 32, Balance sheet and Form-2, which were submitted/uploaded by the Company with MCA.

21. As the issue here is whether the Company made public issue of securities, as alleged in the interim order, it is necessary to refer to the provisions of section 67 of the Companies Act, 1956. This provision provide necessary guidance to determine whether an issue or placement of securities is a 'private placement' or a 'public issue' of such securities. The provisions of section 67 are reproduced herein below for reference:

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

22. From the reading of section 67 of the Companies Act, 1956, especially the sub-section 3 and the two *provisos* thereafter, the following can be deduced:

a) an offer or invitation shall not be treated as made to the public if such offer or invitation can be regarded in all circumstances as not being calculated to result, *directly or indirectly*, in the securities becoming available for subscription or purchase by persons other than those receiving the offer or invitation;

b) an offer or invitation shall not be treated as made to the public if such offer or invitation can be regarded in all circumstances if the same is a domestic concern of the persons making and receiving the offer or invitation; and

c) an offer or invitation made to more than 49 persons is a **public issue** notwithstanding anything contained in sub-section (3) of section 67;

d) Even if an offer is made to 49 persons or less, the company, to state that it made a private placement, has to prove that its case falls either under clause (a) or (b) of section 67(3).

d) NBFCs or PFIs are exempted only from the first *proviso* to section 67(3). The first proviso states 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***. Therefore, NBFC or PFI do not have any restriction on the number of allottees as imposed on a company which is not an NBFC or PFI. However, like a general company, an NBFC or PFI has to prove that its offer falls either under clause (a) or (b) of section 67(3) to claim such issuance to be a private placement. Therefore, an NBFC or PFI could make an offer to 1000 persons (i.e. beyond 49 persons as the first proviso does not apply to them) and its issue can be regarded as a private placement provided clauses (a) or (b) are proved.

In a case involving an NBFC or a PFI; to take a plea that they did not make a public issue, it has to be proved that their offer or invitation did not result, *directly or indirectly*, in the securities becoming available for subscription or purchase by persons other than those receiving the offer or invitation or such offer or invitation was a domestic concern of the persons making and receiving the offer or invitation.

23. While examining the scope of Section 67 of the Companies Act, 1956, the Hon'ble Supreme Court of India in ***Sahara India Real Estate Corporation Limited & Others vs. SEBIand another***(Civil Appeal Nos. 9813 and 9833 of 2011 ; decided on August 31, 2012) ("the Sahara case")had observed the following:

> *"84. 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 subsections (1) and (2), that is to any section of the public, if 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.*
>
> *85. 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. A public company can escape from the rigor of provisions, if the offer is made by companies mentioned under Section 67(3A), i.e. by public financial institutions specified under Section 4A or by non-banking financial companies referred to in Section 45I(f) of the Reserve Bank of India Act, 1934.*
>
> *Following situations, it is generally regarded, as not an offer made to public.*
>
> - *Offer of securities made to less than 50 persons;*
> - *Offer made only to the existing shareholders of the company (Right Issue);*
> - *Offer made to a particular addressee and be accepted only persons to whom it is addressed;*
> - *Offer or invitation being made and it is the domestic concern of those making and receiving the offer.*

86. Resultantly, if an offer of securities is made to fifty or more persons, it would be deemed to be a public issue, even if it is of domestic concern or proved that the shares or debentures are not available for subscription or purchase by persons other than those received the offer or invitation.…"

24. The Company contended that as it is an NBFC, the same exempts it from the applicability of section 67(3) of the Companies Act. In this regard, it is to be appreciated that the 'exemption' available to an NBFC is in terms of the second *proviso* to section 67(3) and what is exempted is the rule laid down in the first *proviso* that *nothing contained in sub-section (3) shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more.* As mentioned above, in terms of section 67(3) (a) & (b) of the Companies Act, 1956, in order to show that an offer was not made to public, it has to be proved that the offer or invitation did not result in the securities being available for subscription to a person who did not receive the offer or that the offer or invitation was a domestic concern of the person making and receiving such offer. In terms of the first *proviso,* the above proof was not required if a company made offer to 50 or more persons. As the second *proviso* provided that nothing contained in the first *proviso* would apply to NBFCs or PFIs, such entities could make offer or invitation to 50 or more persons subject to the provisions contained in clauses (a) and (b) of section 67(3). Accordingly, an NBFC may make an offer to more than 49 persons and has to prove that its offer did not result in the securities being available for subscription to a person who did not receive the offer or that the offer or invitation was a domestic concern of the person making and receiving such offer, in order to claim that such offer and allotment was done through a 'private placement'.

25. The Company has also referred to the observation "….*A public company can escape from the rigor of provisions, if the offer is made by companies mentioned under Section 67(3A), i.e. by public financial institutions specified under Section 4A or by non-banking financial companies referred to in Section 45I(f) of the Reserve Bank of India Act, 1934*" made by the Hon'ble Supreme Court in the Sahara case. In this regard, I note that the Hon'ble Court in the same judgment has observed "84. … *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.*" On a combined reading of the provisions of section 67(3) and the above observations of the Hon'ble Supreme Court, it is clear that the exemption available to an NBFC under the second proviso to section 67(3) is only with respect to the number of persons and not the complete provisions of section 67(3).

26. The Company has referred to the order of Hon'ble SAT in the matter of *Toubro Infotech& Industries Limited vs. SEBI (Appeal No. 141/2003)* and stated that the Hon'ble SAT held that the onus to establish that a particular issue is intended to be a public issue lies upon SEBI. In the present case, the Company, being an NBFC, has admittedly made an offer and allotted 6,35,39,100 RPS to 28164 persons during the Financial Year 2006–07. This offer and allotment was made pursuant to the grant of a certificate of registration from the RBI to act as an NBFC. Therefore, for the Company to claim that it made a private placement of such securities, it has to comply with either clause (a) or (b) of section 67(3) and prove that its case fell within the ambit of either of the said clause. I also note that the Company, as per its terms and conditions of offer of RPS, has offered the said securities to "*Individuals, Trusts, Corporate Bodies, Minors (through Guardians), Financial Institutions, Mutual Funds, HUFs and Co – operative Bodies.*". This manner of placing of securities cannot be considered as having offered the securities to an identified person or to consider the same as a 'domestic concern' in terms of clause (b) of section 67(3). In this regard, it is important to reproduce the following observation from the interim order :

"*ACL has failed to provide details of individuals/investors to whom Redeemable Preference Shares was allotted vide ACL's Board Resolution dated 15.02.2006. Further, ACL has not submitted copies of the prospectus, invitation letter or offer document through which it sought subscription from the investors. I note that SEBI repeatedly sought the aforesaid information vide letters dated October 1, 2013; February 20, 2014 and March 27, 2014, which as on date, have not been submitted by ACL*".

The Company, in its submissions, has stated that in response to the SEBI's letter seeking information with respect to the list of allottees and their details, the Company has sought 60 days' time to provide the same and as it understood that the RoC had forwarded a CD containing the names of allottees, it did not feel the need to send further information to SEBI. I also note that even after passing of the interim order making the allegations, the Company while making submissions on the merits of the case, has not forwarded any material to substantiate its contention that its offer was made to identified persons or that its offer was a 'domestic concern'.

In this regard, I refer and rely on the following observations made by the Hon'ble Supreme Court in the Sahara case:

"51. ..... *Documents produced before us and before the fact finding authorities do not show the relationship Sahara Group had with the investors. Claim of Saharas was that the investors were their friends, associated group companies, workers/employees and other individuals who were associated/affiliated or connected with Sahara Group. Saharas, in the bonds, sought for a declaration from the applicants that they had been associated with Sahara Group. No details had been furnished to show what types of association the investors had with Sahara Group. Bonds also required to name an introducer, whose job evidently was to introduce the company to the prospective investor. If the offer was made to those persons related or associated with Sahara Group, there was no necessity of an introducer and an introduction. Burden of proof is entirely on Saharas to show that the investors are/were their employees/ workers or associated with them in any other capacity which they have not discharged.* "

Even though the standards of Evidence Act, 1872 need not be complied with in a quasi-judicial proceedings, under the principles of natural justice, it will be instructive to refer to section 103 of the said Act, which reads as under -

"103. Burden of proof as to particular fact

The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration

A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C, A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it."

As the Company claims that it had made a private placement of securities, the onus was on it to prove the same. Mere statement that the issuance of shares was not calculated to result, directly or indirectly, in the shares becoming available for subscription or purchase by persons other than those receiving the offer ; the offer made was otherwise as being a domestic concern of the persons making and receiving the offer or invitation, would definitely not suffice. The Hon'ble Supreme Court in the Sahara case has *inter alia* held that if an offer is made to a particular addressee and is accepted only by the persons to whom it is addressed, then the same is not a public offer. The Company has failed to provide documents that may support its contention. Further, it has also failed to provide documents as sought by SEBI vide letters dated October 1, 2013; February 20, 2014 and March 27, 2014. As such information was in the exclusive possession of the Company and therefore failure to produce the same could infer that on producing the

same may go against its stand has to be taken. In this regard, I note that the Hon'ble Bombay High Court in *ICI India Ltd. Vs. Presiding Officer and others* {1993 (3) BomCR 387} had observed that an adverse inference was justified when a party who was ordered to produce the documents failed to produce them. The relevant observation is as below:

" ..... The Respondents had moved an application before the Tribunal seeking a direction to the petitioner for production of certain documents and information. As expected, the application was vehemently opposed. The Tribunal made an order dated October, 21, 1988 and directed the petitioner to produce : (i) documents showing the details of the pension schemes formulated for the non-management staff from 1961 onwards. (ii) the details of the pension scheme or schemes for the management staff with effect from April 1, 1985. showing all pensionary benefits given to the management staff and (iii) the details of the pension funds. The response of the petitioner was truncated and half-hearted. It produced some, but did not produce other material, as according to it the material was irrelevant for adjudication. In the face of the failure to comply with its direction, the Tribunal was fully justified in drawing an adverse inference. ..... If the employer resorts to hide and seek, he runs the risk of an adverse inference. I am by no means satisfied that the Tribunal has acted without jurisdiction or justification, in drawing the adverse inference against the employer in the instant case".

SEBI has already taken a *prima facie* view in the interim order that the offer or invitation made by the Company was not a private placement and that such offer was made to the general public. The same has not been disproved by the Company. The Company did not produce documents as sought by SEBI and as discussed above failed to substantiate its contention that its allotment was on private placement as provided under section 67(3) (a) and (b) of the Companies Act, 1956. In view of the above, I conclude that the offer and allotment of securities (RPS) made by the Company during the financial year 2006-2007, done pursuant to its registration as an NBFC, was a 'public issue'.

27. The Company has also referred to the Financial Stability Report of the RBI and the Circulars issued by RBI in the year 2013 and submitted that -

a) the said Report of 2010 specifically records that NBFCs are exempt from the provisions of section 67 of the Companies Act and that RBI was in the process of formulating guidelines in conjunction with the MCA to plug the contemporaneous regulatory gap;

b) the issuance of RBI circulars dated June 27, 2013 and July 02, 2013 for NBFCs (*which have mandated that the rule of 49 shall be applicable to NBFCs also*) made it clear that no restrictions were applicable at the time when the Company issued the RPS.

I have perused the Financial Stability Report of the RBI and note that in paragraph 5.62, it is stated "*5.62 NBFCs are exempt from the provisions of Section 67 of the Companies Act, 1956, in terms of which issuance of shares/debentures to more than 49 investors needs to be through public issuance. This means that NBFCs, particularly those not regulated by the Reserve Bank, could issue debt or quasi-debt instruments to a large number of retail/institutional investors on a private placement basis. This would be tantamount to raising public deposits outside the extant regulatory framework.*

5.63 Specific concerns in this regard have arisen in the past in the context of private placement of Convertible Preference Shares (CPS) by few NBFCs."

As can be noted, the focus is on the exemption to NBFCs from the provisions of section 67 {i.e. second proviso to section 67(3)}. The report does not state that NBFCs are also exempt from satisfying clauses (a) & (b) to section 67(3). Therefore, as discussed above, an NBFC, prior to June 27, 2013 had to prove that its issue was on private placement satisfying clauses (a) and (b) of section 67(3) of the Companies Act and from June 27, 2013 onwards had to comply with the restriction of allotting to not more than 49 in a private placement.

28. The Company has contended that SEBI in its advertisement dated November 15, 2013 had stated that "*Schemes/Arrangements made or offered by Cooperative Societies, deposits accepted by NBFCs ..... are outside the purview of SEBI's jurisdiction*". According to the Company, it is the stand of SEBI that NBFCs are outside the purview of its jurisdiction and therefore the interim order ought to be recalled immediately. The SEBI advertisement refers only to the 'deposits" by NBFCs and not offer or issuance of securities by NBFCs. In view of the observations made in the foregoing paragraphs, it is clear that NBFC also have fetters in respect of offer and issuance of securities to the public and has to necessary comply with the public issue norms mandated under the Companies Act and SEBI Act/regulations.

29. The interim order has stated that the Company had admittedly offered and allotted 10,16,73,330 RPS of ☐10/- each for the Financial Years 2003–04, 2004–05 and 2005–06 done pursuant to Board Resolutions dated 20.06.2003 and 15.11.2004. **These offer and allotments were made when the company was not registered as an NBFC (registration was on December 26, 2005) and therefore it did not have any exemption from the '49 rule' under the second proviso to section 67(3) of the Companies Act**. The details of allotments are as below:

Year	Date of allotment	Amount Per Share (₹)	No. of Redeemable Preference Shares	No. of persons to whom Redeemable Preference Shares were issued	Total Amount Raised (₹)
2003–04	30.08.2003	10	13074000	Not available	130740000
2004–05	31.12.2004		45543680	Not available	455436800
2005–06	30.07.2005		43055650	Not available	430556500
Total			**10,16,73,330**		1,01,67,33,300/-

Assuming that the offer and allotment on August 30, 2003 was done in terms of the Board Resolution dated June 20, 2003, it is noted that the Company allotted 1,30,74,000 shares and mobilised Rs.13,07,40,000/-. The Company has failed to provide documents in this regard as alleged in the interim order. The Company has not proved that the above offer and allotment was done on private placement and that the same was made to 49 persons or less. The same observations would be applicable with respect to the allotments made on 31.12.2004 and 30.07.2005 also.

Therefore, it is concluded that the Company had made a public offer of RPS and allotted such securities on the dates mentioned above.

30. In view of the above, it is concluded that the Company made a public issue of RPS as alleged in the interim order. The interim order has also alleged that the Company failed to comply with the norms stipulated for public issue of securities under the Companies Act, 1956 (sections 56, 60 read with section 2(36), 73) and the DIP Guidelines read with the ICDR Regulations. Having arrived at a conclusion that the Company had made a public issue of securities, it was under an obligation to comply with the Companies Act, 1956, SEBI Act, and the rules, regulations and guidelines framed thereunder which regulate the public issue of equity shares. In this regard, I find it necessary to refer to the judgment of the Hon'ble Supreme Court of India made in the Sahara case:

"……. 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."

"90. …… in India that <u>any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue</u>."

31. I also note that the jurisdiction of SEBI over various provisions of the Companies Act, 1956 in the case of public companies, whether listed or unlisted, when they issue and transfer securities, flows from the provisions of Section 55A of the Companies Act, 1956. While examining the scope of Section 55A of the Companies Act, 1956, the Hon'ble Supreme Court of India in the Sahara case had observed:

> *"We, therefore, hold that, so far as the provisions enumerated in the opening portion of Section 55A of the Companies Act, so far as they relate to issue and transfer of securities and non-payment of dividend is concerned, SEBI has the power to administer in the case of listed public companies and in the case of those public companies which intend to get their securities listed on a recognized stock exchange in India."*

32. Whenever a company makes a public issue of securities, it is mandated to apply for and list such securities as mandated under section 73 of the Companies Act, 1956. The Hon'ble Supreme Court of India in the Sahara case has examined section 73 and made the following observations:

> *"Section 73(1) of the Act casts an obligation on every company intending to offer shares or debentures to the public to apply on a stock exchange for listing of its securities. Such companies have no option or choice but to list their securities on a recognized stock exchange, once they invite subscription from over forty nine investors from the public. If an unlisted company expresses its intention, by conduct or otherwise, to offer its securities to the public by the issue of a prospectus, the legal obligation to make an application on a recognized stock exchange for listing starts. Sub-section (1A) of Section 73 gives indication of what are the particulars to be stated in such a prospectus. The consequences of not applying for the permission under sub-section (1) of Section 73 or not granting of permission is clearly stipulated in sub-section (3) of Section 73. Obligation to refund the amount collected from the public with interest is also mandatory as per Section 73(2) of the Act. Listing is, therefore, a legal responsibility of the company which offers securities to the public, provided offers are made to more than 50 persons."*

There is no material to suggest that the Company applied for listing permission from a stock exchange. One of the noticees, Mr. Kanwar Deep Singh has contended that being an unlisted company, there was no requirement of any compliance of section 73 of the Companies Act and/or provisions of the SEBI Act. This argument is fallacious. As the issue was a public issue of RPS, the Company has to mandatorily list the same. The Company has always maintained that its issuance was on private placement and it did not file any Prospectus. The Company has failed to apply to a stock exchange for listing its securities (RPS) in

violation of section 73(1) of the Companies Act. Section 73(2) mandates that if permission for listing has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants 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. Section 73(3) mandates that '*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 five thousand rupees.'*. As listing was not done, the Company had to repay the money in terms of this provision. Accordingly, the Company is in violation of section 73(2) & (3) of the Companies Act, 1956 also.

33. Section 2(36) of the Companies Act read with section 60 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per section 2(36) of the Companies Act, 1956 'prospectus' means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. In terms of section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, contain disclosures as specified. As per the Company and Mr. Kanwar Deep Singh, the Company neither issued any Prospectus in relation to its shares. As the Company had admitted that it did not file any Prospectus with respect to its offer and allotment of RPS, as found above in this Order, I find that the Company has contravened the above provisions of the Companies Act, 1956.

34. The interim order has also alleged that the Company contravened the following provisions of the DIP Guidelines:

a. Clause 2.1.1. – (*Filing of offer document*)
b. Clause 2.1.4 – (*Application for listing*)
c. Clause 2.1.5 – (*Issue of securities in dematerialized form*),
d. Clause 2.8 – (*Means of finance*),
e. Clause 4.1 – (*Promoters contribution in a public issue by unlisted companies*),
f. Clause 4.11 – (*Lock-in of minimum specified promoters contribution in public issues*),
g. Clause 4.14 – (*Lock-In of pre-issue share capital of an unlisted company*)
h. Clause 5.3.1 – (*Memorandum of understanding*),
i. Clause 5.3.3 – (*Due Diligence Certificate*)
j. Clause 5.3.5 – (*Undertaking*),
k. Clause 5.3.6 – (*List Of Promoters Group And Other Details*),
l. Clause 5.4 – *(Appointment of intermediaries)*
m. Clause 5.6 – (*Offer document to be made public*)
n. Clause 5.6A – (*Pre-issue Advertisement*)
o. Clause 5.7 – *(Despatch of issue material)*
p. Clause 5.8 – *(No complaints certificate)*
q. Clause 5.9 – *(Mandatory collection centres* including *Clause 5.9.1* (*Minimum number of collection centres*)
r. Clause 5.10 – *(Authorised Collection Agents)*
s. Clause 5.12.1 – (*Appointment of compliance officer*)
t. Clause 5.13 – *(Abridged prospectus)*
u. Clause 6.0 – *(Contents of offer documents)*
v. Clause 8.3 – (*Rule 19(2)(b) of SC(R) Rules, 1957*)
w. Clause 8.8.1 – (*Opening & closing date of subscription of securities*)
x. Clause 9 – *(Guidelines on advertisements by Issuer Company)*
y. Clause 10.1 – (*Requirement of credit rating)*
z. Clause 10.5 – (*Redemption*)

The Company has not filed any offer document with SEBI and has also not complied with the above requirements. The said failure by the Company is therefore in violation of the above provisions. Though the DIP Guidelines stood rescinded, regulation 111(2) of the ICDR Regulations, provided that:

> *"(2)Notwithstanding the repeal under sub-section (1) of the repealed enactments,—*
> *(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Guidelines shall be deemed to have been done or taken under the corresponding provisions of these regulations;*
> *(b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Guidelines and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations."*

Accordingly, the said violations of the DIP Guidelines are actionable even though the said Guidelines have been rescinded.

35. In view of the above observations and findings, the Company is found to have contravened the provisions of sections 60, 56 and 73 of the Companies Act, 1956 and the aforesaid provisions of the DIP Guidelines read with regulation 111 of the ICDR Regulations. The Company shall therefore be liable to make refunds as per the mandate under section 73(2) of the Companies Act, 1956 and also for regulatory action for committing the above violations.

36. Liability of directors:

The interim order is in respect of Mr.Mansoor Ahmed, Mr.Hariharan Veeraraghavan, Mr.Harjit Singh, Smt. Harpreet Kaur, Mr. Sandeep Sethi, Mr. Brij Mohan Mahajan, Mr. Sunil Kanti Kar, Mr.Virendra Singh, Mr.Kanwar Deep Singh, Mr. R. P. Chhabra and Mr.Ravinder Singh.

Liability for non-compliance with the norms mandated for making offer and issuance to the public:

In the above paragraph, the Company is found responsible for not complying with the mandate under sections 56, 60 and 73 of the Companies Act, 1956 and the DIP Guidelines. Therefore, the directors of the Company who were on the Board of Directors during the period when offer for issuance of RPS and subsequent allotment are liable for such violations committed by the Company. Certain directors have taken defence that SEBI Act does not impose vicarious liability and therefore it is bad in law to proceed against them for the violations committed by the Company. They have also cited the observations of the Hon'ble Supreme Court in the matters of Sunil Bharti Mittal vs. CBI and National Small Industries Corporation vs. Harmeet Singh Paintal. I have perused the observations as cited by the noticees. It needs to be noted that such observations were made in criminal proceedings wherein the burden of proof is strict. Further, in criminal proceedings *mens rea* or the intent to commit the crime is required to be proved. However, these proceedings are not criminal in nature therefore there is no requirement to prove that the directors had the criminal intent. The Hon'ble Supreme Court has held that the cardinal principle of criminal jurisprudence is that there is no vicarious liability unless the statute specifically provides so. In the present case, which is not a criminal proceeding, the directors shall be liable for contraventions of the norms stipulated under the Companies Act, 1956 and SEBI Guidelines/regulations for making a public issue of securities by virtue of their position as 'directors' in the corporation as they are the ones who

decide its policies, decisions, business affairs and the manner of functioning. A policy or a business decision is decided by the Board of Director of the Company. Therefore, it becomes necessary to make such directors liable for any contraventions/non-compliances by the Company arising out of such actions/policies during the tenure of their directorship. Therefore, I am of the considered view that those directors who were on the Board of the Company when the impugned offer and issue of securities were made by the Company to the public, shall be responsible. This would be the approach in judging whether a particular noticee-director is liable or not.

Liability in terms of section 73(2) of the Companies Act, 1956:

Section 73 provides that if listing permission is not applied or when such permission is not granted, the company shall refund the money collected in the issue. If such refunds are not made within the time specified, 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. The liability to refund is a continuing liability and is discharged only on making such refunds. Therefore, a director who was in the board when the impugned offer and issue of RPS by the Company during 2003-2006, as well as directors who joined the Board of Directors of the Company subsequent to such issue of securities are ***officers in default*** in terms of the said provision and would continue to be so till such time the liability (to make refunds) is discharged.

A. Liability of Mr. Mansoor Ahmed and Mr. Hariharan Veeraraghavan:

The Company in its written submissions has submitted that Mr. Hariharan Veeraraghavan and Mr. Mansoor Ahmed are the present directors of the Company and were appointed on August 05, 2009 and January 22, 2010 respectively. Therefore, in accordance with the observations made above, these persons have joined subsequent to the offer and issue of RPS, as impugned in the interim order. Therefore, they are officers in default and liable to make refunds of the public monies mobilized under the Company's offer and issue of RPS. These noticees, being *officers in default* under section 73, is therefore liable for a direction to make repayment and also for regulatory action for the default in making the payment to the investors.

B. Liability of Mr. Harjit Singh:

i. This noticee has submitted that he was appointed as an Independent Director of the Company on August 19, 2013 and resigned on July 15, 2014. He has filed documents claiming to support such submission. I have perused the copies of resignation letter and Form-32. The contention of this noticee is that the impugned allotment happened during the period 2003-2006 and that during such period the noticee was neither a director nor a shareholder. The noticee has also contended that the transactions during such period cannot be deemed to be within the knowledge of the noticee and he cannot held accountable for lapses in regulatory compliances.

ii. I have considered the submissions. In view of the observations made above with respect to '*Liability in terms of section 73 of the Companies Act, 1956*', every director who was in the Board during the offer and issue of RPS as well as directors who join the board subsequent to such issue of securities are officers in default in terms of the said provision are laible. Though the noticee had joined the Board of directors subsequent to the offer and issue of RPS, he is also liable to make the refund during his tenure as a director. There is no record to state that this noticee had taken steps for refund during the period when he was a director in the Company.

iii. The noticee has also submitted that he was an Independent Director and not responsible for the day to day management and control of the Company. An independent director, who is not connected with the promoters or executive director, is appointed in a company to ensure that the affairs of the company are conducted in a manner which does not prejudice the interest of the shareholders. The noticee by not taking steps to make refunds to the RPS holders has not safeguarded their interests. This noticee, being an officer in default under section 73, is therefore liable for a direction to make repayment and also for regulatory action for the default in making the payment to the investors.

iv. Mr. Harjit Singh has also contended that provisions of sections 11, 11A and 11B of the SEBI Act do not spell out vicarious liability on the directors for the offences committed by the company and therefore the finding the directors guilty of the violations was completely without jurisdiction. It is to be appreciated that when SEBI has the power (in terms of section 55A of the Companies Act) to administer certain provision of the Companies Act including section 73 (*which stipulates listing and on failure or non-filing application for listing, to make refunds to the subscribers*) and also power to regulate

the issue of capital, and as such activity pertains to the securities market, SEBI is empowered to invoke the provisions of sections 11, 11A and 11B for issuing preventive and remedial directions in the interest of investors and the securities market. SEBI is also empowered to intervene with regulatory action if there is a breach of applicable securities laws. I have already observed above as to how this noticee is an officer in default and that he has committed default in making refunds. Considering all the above observations, the above argument of this noticee does not have any merit.

C. <u>Liability of Mr. Sandeep Sethi</u>:

i. The noticee submitted that he was an Independent Director of the Company from January 22, 2009 to October 01, 2013. The noticee's main contention is that he was not a director of the Company when the impugned RPSs were issued and therefore not involved in the alleged violations. Considering the observations made with respect to '*Liability in terms of section 73 of the Companies Act, 1956*', this noticee is also held to be an 'officer in default' and liable for not making the refunds as mandated under the said Act. Therefore, suitable regulatory action would need to be taken against him.

ii. The noticee has also contended that the issuance of RPS was on private placement and that the directors cannot be held vicariously liable for the violations committed by the Company. The noticee also submitted that he was only an independent director and did not involve in the day to day functions of the Company. The noticee has referred to certain case laws including *Sunil Bharti Mittal vs. CEB* and submitted that the offending acts of a company can be foisted on its directors only when the applicable statute specifically provides for vicarious liability. These submissions have already been discussed above in this Order. In this regard, as already discussed above, a director who is an officer in default also has the liability, jointly and severally, to make refunds in terms of section 73 of the Companies Act. This liability is mandated by the statute. Therefore, finding the noticee guilty for not complying with the said provisions and issuing directions for such default cannot be said to be without jurisdiction of SEBI.

D. <u>Liability of Mr. Kanwar Deep Singh</u>:

i. This noticee has submitted that he was a director of the Company from its incorporation till April 05, 2004. The noticee had enclosed documents in support of his resignation. The noticee has submitted that he had acted on good faith and discharged his functions with utmost diligence following professional advice and cannot be made liable for the acts of the Company if SEBI reaches a conclusion that the Company has violated the Companies Act and SEBI Act. The noticee also contended that -

- the allotment made on August 30, 2003 may be relevant as the allotments done on the other dates were done after his resignation as a director in the Company.
- the allotment on August 30, 2003 was made pursuant to a Special Resolution passed by the Board of the Company dated July 21, 2003 for issuance of RPS on private placement basis.
- The impugned allotment was made pursuant to specific professional advise that the issuance of such RPS on private placement would comply with the provisions of the Companies Act, 1956.
- the Company was an unlisted company, there was no requirement of any compliance of section 73 of the Companies Act and the SEBI Act and regulations framed thereunder.
- the reliance on the judgment in the *Sahara* case is misplaced and it is impossible to contend that the said decision would operate retrospectively to the transactions which took place almost a decade ago.

ii. As per the interim order cum SCN, the Company had, on August 30, 2003, allotted 1,30,74,000 RPSs and raised Rs.13,07,40,000/- The said issue of RPS is already held to be a public issue done in non-compliance with the applicable public issue norms under the Companies Act, SEBI Act and regulations and guidelines framed thereunder. It was also observed that the Company committed a default in complying with section 73 in making the refunds to its subscribers. Therefore, this noticee is liable for action in respect of this allotment (which was not in compliance with the public issue norms) and default in making refunds. The noticee shall need to be directed to make the refunds of the money collected under the above said allotment and also for suitable regulatory action for the default.

E. <u>Liability of Mrs. Harpreet Kaur</u>:

The noticee has submitted that she was an 'initial' director and was named as such in the Articles of Association of the Company and had resigned on February 28, 2001. A copy of her resignation letter dated February 28, 2001 and the Form (*dealing with particulars of appointment of directors and changes therein*) were filed

in support of the submission. I have perused such documents. As this noticee had resigned prior to the period/date of allotment of RPS, which was done in contravention of the legal provisions, the interim directions against this noticee are liable to be revoked and shall be discharged from the proceedings.

F. Liability of Mr. Brij Mohan Mahajan:

This noticee has contended that he was appointed as an independent director of the Company on April 03, 2004 and resigned on March 2009. Therefore, in view of the previous observations made with respect to the liability of directors, this noticee is liable for the violations committed by the Company while making offer and issuance of RPS during his tenure and also for default in making refunds as mandated under section 73(2).

The other contentions/submissions made by this noticee have already been addressed in this Order.

G. Liability of Mr. Virendra Singh:

This noticee has stated that he became a director in the Company on April 03, 2004 and resigned on August 17, 2010. His contention have also been dealt with in the previous paragraphs of this Order. Therefore, in view of the previous observation on the liability of directors, this noticee is liable for the violations committed by the Company while making offer and issuance of RPS during his tenure and also for default in making refunds as mandated under section 73(2).

H. Liability of Mr. R.P. Chhabra:

(a) The noticee submitted that he was appointed as a director on February 28, 2001 and had resigned on April 05, 2004. He has submitted documents in support of his submission. I have perused the same.

(b) According to this noticee, only one allotment of RPS on August 30, 2003 was made during his tenure as a director. The noticee has contended that such allotment was on private placement. This contention is already dismissed as it is found that the Company made a public issue of RPS. In view of the observations made with respect to fixing of liability of directors, this noticee would be liable for the non-compliance of the Company with the public issue norms with respect to the offer and issue of RPS done on August 30, 2003. Further, the noticee would also be liable for making refunds in terms of section 73(2), if not done till date by the Company. Therefore, the

liability of this noticee would be discharged if the Company proves with documents, to the satisfaction of SEBI, that the monies collected through allotment of securities on August 30, 2003 have been refunded with interest as directed below.

(c) The noticee has also contended that there was no specific allegation against him. In this regard, I note that the interim order had recorded the *prima facie* violations committed by the Company. The *prima facie* violations included section 73 of the Companies Act. Section 73 mandates refund of the subscription amounts to investors in case listing is not done or refused by a stock exchange. Therefore, it cannot be said that there is no charge against the directors. The noticee has also contended that action by SEBI is hit by delay and laches. It may be noted that SEBI conducted an enquiry pursuant to receipt of reference from RoC during September 2013 and thereafter passed the interim order. SEBI can take action only when any alleged violation or non-compliance comes to its notice.

(d) I have also considered the submissions made by the noticee that he is no longer associated with the Company and cannot take decision or action on behalf of the Company. In this regard, as already discussed above, the liability under section 73 is that of '*joint and several*' liability. Unless such liability is discharged, action is maintainable under the securities laws.

(e) The noticee has also contended that no urgency was shown as to why interim order was passed against him. Considering the liability and the violations committed, SEBI has issued the interim order in order to protect the investors.

I. <u>Liability of Mr. Sunil Kanti Kar and Mr. Ravinder Singh :</u>

The above noticees have not responded to the interim order. As per the information provided by the RoC, Mr. Sunil Kanti Kar was a director in the Company from April 03, 2004 to February 16, 2009. Mr. Ravinder Singh was a director from December 17, 2000 to April 05, 2004. As per the interim order, the impugned offer and allotments were made on the following dates – 30.08.2003, 31.12.2004, 30.07.2005, 10.04.2006 and 30.06.2006. Therefore, **Mr. Sunil Kanti Kar** shall be liable for the violations committed for the allotments excluding the allotment on 30.08.2003 and for default in making the refunds in terms of section 73(2). Though Mr. Sunil Kanti Kar was said to have expired, no death certificate was produced.

Accordingly, the Order is passed in his respect also. **Mr. Ravindra Singh** is liable for the non-compliance of the Company with the public issue norms with respect to the offer and issue of RPS done on August 30, 2003. Further, the noticee would also be liable for making refunds in terms of section 73(2), if not done till date by the Company.

J. As per the details available on the MCA website, the following are the present directors:

DIN/DPIN/PAN	Full Name	Present residential address	Designation	Date of Appointment
01806631	MANSOOR AHMED	30F/1ST MUNSHI SADARUDDIN LANE 41, 42, KOLKATA, 700007, West Bengal, INDIA	Director	22/01/2009
03163235	HARIHARAN VEERARAGHAVAN	412,BLG, NEW ALIPORE, KOLKATA, 700039, West Bengal, INDIA	Whole-time director	05/08/2010
06713908	SUBRAMANIAN AYYAPPAKUTTY NAMBI	B-102, GAYATRI APPARTMENT,, PLOT NO. 9, SECTOR-9, DWARKA, SOUTH WEST DELHI, DELHI, 110077, Delhi, INDIA	Director	01/05/2014

The liability of directors Mr. Mansoor Ahmed and Mr. Hariharan Veeraghavan are already discussed above. It is noted that one **Mr. Subramanian Ayyappakutty Nambi** has joined the Board of directors of the Company on May 01, 2014. As this person is one of the present directors in the Company, he is also under liability to make repayments to investors in terms of section 73 of the Companies Act. **SEBI is advised to issue a show cause notice to him for any further directions that would be appropriate in case the Company and directors fail to refund the amounts collected from investors against offer and/or allotment of RPS.**

37. I also note that the Company and certain noticees have contended that the principles of natural justice was violated as they were not heard before passing the interim order. In this regard, I refer to the following observation from the interim order :

> " 5. *SEBI has a statutory duty to protect the interests of investors in securities and promote the development of, and to regulate, the securities market. Section 11 of the SEBI Act has empowered it to take such measures as it thinks fit for fulfilling its legislative mandate. Further, as per the provisions of Section 55A of the Companies Act, 1956 read with Section 465 of the Companies Act, 2013, administrative authority on the subjects relating to public issue*

of securities is with SEBI. For this purpose, SEBI can exercise its jurisdiction under Sections 11(1), 11A, 11B and 11(4) of the SEBI Act read with Section 55A of the Companies Act, 1956 and Section 465 of the Companies Act, 2013; the DIP Guidelines read with ICDR Regulations, over companies who issue securities such as Redeemable Preference Shares by way of a public issue, but do not comply with the applicable provisions of the aforesaid Companies Acts (as mentioned in paragraphs 4.1–4.14 above). Steps therefore, have to be taken in the instant matter to ensure that only legitimate fund raising activities are carried on by ACL and no investors are defrauded. In light of the same and also considering the failure on the part of ACL to submit relevant information to SEBI (despite being given several opportunities), I find there is no other alternative but to take recourse through an interim action against ACL and its Directors for preventing that company from further carrying on with its fund mobilising activity under the Offer of Redeemable Preference Shares. "

The need for passing the interim order is already explained in the interim order itself. Further, in terms of section 11(4) of the SEBI Act read with section 11(1) thereof, SEBI can issue interim orders and thereafter afford opportunity of hearing {*as provided under second proviso to section 11(4)*} to such persons after passing of interim orders.

38. In view of the foregoing findings and observations, I, in exercise of the powers conferred upon me under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11(1), 11(4), 11A and 11B thereof and the SEBI (Disclosure and Investor Protection) Guidelines, 2000 read with the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, hereby issue the following directions:

(a) The Company, **Alchemist Capital Limited (PAN- AABCT5925F; CIN - U65993CH2000PLC024127),** its promoters and directors including **Mr. Mansoor Ahmed** (DIN: 01806631; PAN: AKKPA7873P), **Mr. Hariharan Veeraraghavan (**DIN: 03163235; PAN: ABQPV9123N), **Mr. Subramanian Ayyappakutty Nambi** (PAN: , DIN -06713908), **Mr. Harjit Singh (**DIN: 06629572; PAN: ADLPS4992B), **Mr. Sandeep Sethi** (DIN: 01541853; PAN: AQBPS6934N), **Mr. Brij Mohan Mahajan** (DIN: 00031819; PAN: AAWPM1136F), **Mr. Sunil Kanti Kar** (DIN: 00476819; PAN: AEQPK2126K), **Mr. Virendra Singh** (DIN: 01683025; PAN: AAWPM1136F), **Mr. Kanwar Deep Singh** (PAN: ACCPS3258G), **Mr. Ravinder Singh** (PAN: ALHPS5680C) and **Mr. R.P. Chhabra (**PAN : ADOPC4099E), shall jointly and severally, forthwith refund the money collected by the Company through the issuance of Redeemable Preference Shares (*which have been found to be issued in contravention of the public issue norms stipulated under the Companies Act, 1956 and the DIP Guidelines read with the ICDR Regulations*), to the investors

including the money collected from investors, till date, pending allotment of securities, 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.

(b) The Company has claimed to have redeemed a substantial portion of the impugned allotments. If the Company has actually made any repayments to its investors of the amounts collected from them along with promised returns, the above directions shall be applicable for the amounts due to be returned to remaining investors. However, such repayments as claimed to have been already made by the Company, shall be certified by Chartered Accountants, as directed in sub-paragraph (**f**) below.

(c) The repayments to investors shall be effected only in cash through Bank Demand Draft or Pay Order.

(d) **The Company /its present management** are permitted to sell the assets of the Company only for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalised Bank.

(e) **The Company** and its promoters and directors shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including details of contact persons including names, addresses and contact details, within fifteen days of this Order coming into effect.

(f) After completing the aforesaid repayments, the Company shall file a certificate of such completion with SEBI from two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India ("ICAI").

(g) **The Company** is directed not to, directly or indirectly, access the capital market by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly

or indirectly in whatsoever manner, from the date of this Order till the expiry of 4 years from the date of completion of refunds to investors as directed above.

(h) **The persons/directors, namely** –

1. **Mr. Mansoor Ahmed** (DIN: 01806631; PAN: AKKPA7873P),
2. **Mr. Hariharan Veeraraghavan** (DIN: 03163235; PAN: ABQPV9123N),
3. **Mr. Harjit Singh** (DIN: 06629572; PAN: ADLPS4992B),
4. **Mr. Sandeep Sethi** (DIN: 01541853; PAN: AQBPS6934N),
5. **Mr. Brij Mohan Mahajan** (DIN: 00031819; PAN: AAWPM1136F),
6. **Mr. Sunil Kanti Kar** (DIN: 00476819; PAN: AEQPK2126K),
7. **Mr. Virendra Singh** (DIN: 01683025; PAN: AAWPM1136F),
8. **Mr. Kanwar Deep Singh**, (PAN: ACCPS3258G),
9. **Mr. Ravinder Singh** (PAN: ALHPS5680C), and
10. **Mr. R.P. Chhabra** (PAN : ADOPC4099E)

are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, with immediate effect. They are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI.

The above directions shall come into force with immediate effect and shall continue to be in force from the date of this Order till the expiry of 4 years from the date of completion of refunds to investors as directed above.

(i) For the reasons stated above in this Order, the directions imposed on **Smt. Harpreet Kaur** (PAN: ABCPK6456B), vide the interim order dated December 08, 2014 are revoked and the proceedings against her is disposed of.

(j) The above directions shall come into force with immediate effect.

39. In case of failure of the company, **Alchemist Capital Limited,** its promoters and directors including **the noticees** (except Smt. Harpreet Kaur) in complying with the aforesaid directions, SEBI, on expiry of three months period from the date of this Order -

a) shall recover such amounts in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
b) may initiate appropriate action against the Company, its promoters/ directors and the persons/ officers who are in default, including adjudication proceedings against them, in accordance with law.
c) would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds; and
d) would also make a reference to the Ministry of Corporate Affairs, to initiate the process of winding up of the Company.

40. This Order is without prejudice to any action, including adjudication and prosecution proceedings that might be taken by SEBI in respect of the above violations committed by the Company, its promoters, directors and other key persons.

41. Copy of this Order shall be forwarded to the recognised stock exchanges and depositories for information and necessary action.

42. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs/concerned Registrar of Companies, for their information and necessary action with respect to the directions/restraint imposed above against the Company and the individuals.

PRASHANT SARAN
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date : August 03, 2015
Place : Mumbai