**QJA/SS/WRO/WRO-DIV-3/32000/2025-26**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

**Under Sections 11(1), 11(4), 11(4A), 11A and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of KKP Marketing India Limited (CIN: U52390GJ2010PLC060882.**

**In respect of:**

| Noticee | Name | PAN/CIN |
|---|---|---|
| 1. | KKP Marketing India Limited | U52390GJ2010PLC060882 |
| 2. | Mr. Jayantbhai Karamshibhai Patel | AAVPP9910F |
| 3. | Mr. Damji Hirjibhai Patel | AJPPP7412H |
| 4. | Mr. Prakash Harji Mavani | AGTPM8884F |
| 5. | Mr. Hitesh Gangaram Patel | AJAPP0527A |
| 6. | Mr. Shantilal Kanjibhai Patel | AKKPP4153H |
| 7. | Mr. Shankar Lal Patel | ADDPP3445L |
| 8. | Mr. Kanthilal Premji Patel | AAQPP7013C |
| 9. | Mr. Suresh Ladharam Patel | ADNPP6685J |
| 10. | Mr. Gaurang Khetabhai Patel | ABGPP5622E |
| 11. | Mr. Saurabh Kumar Amrutbhai Patel | ALNPP0997P |
| 12. | Mr. Leeladhar Gunwantbhai Patel | AANPP1973A |

*The above-mentioned entities are hereinafter individually referred to by their respective names or Noticee number and collectively as "the Noticees".*

**Background:**

1. KKP Marketing India Limited ("**KKP/Company/Noticee No. 1**") is a non-government company, incorporated on May 24, 2010 with its registered office at - Krishna Chamber - A, 1st Floor, Near SBI Bank, Station Road, Bhuj, Gujarat 370001. It is a public unlisted company classified as a company limited by shares.

2. Securities and Exchange Board of India ("**SEBI**") received a complaint dated August 17, 2021 from *Mr. Babulal Ratanshi Patel & Others through his Constituted Attorney - Mr. Gangji Narayan Patel*, raising concerns and requesting SEBI to take appropriate civil and

criminal action against the directors and to direct the company/Noticee No. 1 to pay interest and damages thereon, and such action as has been taken by SEBI in cases of fraud company. The following concerns were raised in the complaint:

2.1. *Public issue of equity shares:* KKP had offered public issue of equity shares in 2010 to the public at large and fraudulently extracted money from people (Patel community) by issuing equity shares at the rate of Rs. 10/- per share without complying with the applicable provisions of the Companies Act, 1956;

2.2. *Lured people into buying equity shares:* In order to lure the people into buying the equity shares, the promoters and directors conducted a public meeting at Bhuj-Kutch and assured to the vast gathering of investors that the said shares shall be listed in the stock market which will fetch the minimum price of Rs. 200/- share. The promoters and directors also declared that the shareholders will be paid higher dividend;

2.3. *No dividend/shares not listed:* Even after a lapse of 11 years, the company has not even paid a single rupee to its shareholders by way of dividend, much less the shares are still not listed or quoted in any stock exchange;

2.4. *Misappropriation of funds:* The object of the company was to engage into marketing of agricultural products and help community's farmers. However, the directors entered into the business of real estate without consulting the shareholders. The directors misappropriated the funds of the company for buying properties in their individual name/capacity. According to the balance sheet as at 31st March 2019, an amount of Rs. 3,01,62,075/- came to be transferred to the director's accounts under the alleged head of short term loan and advances and other loan and advances of Rs. 35,50,000/- M/s Khodiyar Foods Ltd. and other Rs. 2,98,58,925/- advance for immovable properties;

2.5. *Fabricated AGM meetings:* AGM was never conducted and none of the directors have informed the shareholders about AGM. The minutes, if any, of the AGM or any such meetings are false, fabricated and concocted by the directors of the company;

2.6. *Actions by Income Tax Department:* During the assessment conducted by the Income Tax Department in the year 2012-2013, several irregularities and discrepancies were found, in as much, several benami transactions were also found and appropriate actions

have been taken against the company by Income Tax Department. Inspite of the above, in balance sheet as on March 31, 2019, no liabilities are shown against the company;

2.7. *Defrauded more than 607 shareholders:* The company has breached the law and defrauded more than 607 shareholders.

The complainant had also enclosed a copy of the Company Report of 2018/2019 along with a list of 607 shareholders.

3. Pursuant to the above complaint, SEBI conducted examination only with regard to the issuance of equity shares by Noticee No. 1 in order to ascertain any possible violations of the public issue norms stipulated under the provisions of the Companies Act, 1956, the provisions of Securities and Exchange Board of India Act, 1992 ("**SEBI Act**"), Securities and Exchange Board of India (Disclosure and Investor Protection) Guidelines, 2000 ("**DIP Guidelines, 2009**") and Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("**ICDR Regulations**").

5. From the MCA website and the copies of Form 2 (i.e. Return of allotment) available therein, SEBI observed that Noticee No. 1 had issued equity shares to (i) 461 allottees in FY 2010-11, (ii) 3 allottees in FY 2011-12, (iii) 153 allottees in FY 2012-13 and (iv) 80 allottees in FY 2013-14. SEBI observed that apart from FY 2011-12, in the FY 2010-11, 2012-13 and 2013-14, Noticee No. 1 allotted shares to more than 49 persons which qualified as public issues in terms of the provisions of the Companies Act, 1956. Thus, the issuance of equity shares by Noticee no. 1 in FYs 2010-11, 2012-13 and 2013-14 to 461, 153 and 80 persons respectively, are public issues in terms of the provisions of the Companies Act, 1956.

6. Therefore, the instant proceedings were commenced by issuance of a common Show Cause Notice ("**SCN**") dated November 26, 2024 to Noticees No. 1 to 12 calling upon them to show cause as to why suitable directions, under Sections 11(1), 11(4) and 11B(1) of the SEBI Act, including a direction for debarment and refund and further, direction for imposing monetary penalty under sections 11(4A) and 11B(2) read with SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, should not be issued against the Noticees for the alleged violations of the Companies Act, 1956 and the ICDR Regulations.

7. The following allegations were made in the SCN:

*"3.10. On examination of the copies of Form 2 along with annexures as downloaded from MCA website, it is observed that the Company has made following share issuances during Financial Years 2010-11 to 2013-14:*

*Table - 5*

| ***Sr. No.*** | ***Financial Year*** | ***No. of Allotments*** | ***No. of shares Allotted*** | ***Total Nominal Amount (Rs.)*** | ***Total No. of Allottees*** |
|---|---|---|---|---|---|
| *1* | *2010-11* | *11* | *46,22,500* | *₹ 4,62,25,000.00* | *461* |
| *2* | *2011-12* | *1* | *22,500* | *₹ 2,25,000.00* | *3* |
| *3* | *2012-13* | *8* | *9,47,500* | *₹ 1,24,80,325.00* | *153* |
| *4* | *2013-14* | *8* | *5,10,000* | *₹ 67,98,300.00* | *80* |
| | ***Total*** | ***28*** | ***61,02,500*** | ***₹ 6,57,28,625.00*** | ***695*** |

*3.11. From the above table, it is observed that during the financial year 2010-11, 2012-13 and 2013-14, the company has allotted shares to more than 49 persons. In this respect, KKPMIL vide its letter dated June 06, 2022, has inter alia submitted that the shares were issued as part of share capital and offered, issued and allotted only to the persons who or its family is a member of 'Kutch Kadva Patidar Samaj' and the same is further issue of capital and neither mobilization of fund nor the fund raising through collective investment scheme as has been viewed.*

4. *As per the first proviso to Section 67(3) of the Companies Act, 1956 any offer of securities by a public company to fifty persons or more is treated as a public issue, even if, the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation or it is the domestic concern of the persons making and receiving the offer or invitation.*
5. *In view of Paragraph no. 3 and 4 above, it is alleged that the issuance of equity shares by Noticee no. 1 in the financial years 2010-11, 2012-13 and 2013-14 to 461, 153 and 80 persons respectively, as mentioned in Table 3 & 5 above, are public issues in terms of the provisions of the Companies Act, 1956."*

4. The SCN has alleged that Noticee No. 1 violated the provisions of sections 2(36), 56 (1) & (3), 60, 64, and 73 of the Companies Act, 1956 read with section 465(2) of the Companies Act, 2013 and regulations 4(2)(d), 4(2)(e), 5(1), 5(2), 5(5), & 5(7), 6 (1), 7, 16(1), 26(1) and 26(2), 32(1), 36, 37, 46(1), 47(1), 49(1), 57(1), 57(2) and 63 of the ICDR Regulations. Further, as the Board of Directors of Noticee No. 1 were officers in default as per section 5 of the Companies Act, 1956, they were jointly and severally liable to repay the money

raised along with interest as applicable, for the violations of the provisions of the Companies Act, 1956 and the ICDR Regulations. Accordingly, Noticee No. 2 to 12 being the directors of Noticee No. 1 and/or directors at the time of public issue by Noticee No. 1 were deemed to be liable for the violations of Noticee No. 1.

**Replies and Hearing:**

5. Pursuant to the SCN, Noticee No. 1 vide letter dated December 19, 2024 responded stating that the company and its directors are desirous of availing the opportunity of settlement mechanism as per the SEBI (Settlement Proceedings) Regulations, 2018 and are in the process of seeking legal consultation in this regard. The company requested to keep the proceedings in abeyance till the Noticees decide to avail the settlement mechanism.

6. The instant proceedings were also kept on hold as advised by SEBI in view of internal decision taken on February 27, 2025 advising to keep such matters on hold till May 2025. Vide letter dated June 18, 2025, the Noticees while requesting to adjourn the personal hearing sought an opportunity to inspect the documents and provided an indicative list of documents to be provided to them. The inspection of documents was granted to the Noticees on July 22, 2025. The Examination Report ("**ER"**) along with all the annexures to the Report were shown and copy of the same were provided in a Compact Disc. Pursuant to the inspection of documents, an opportunity of personal hearing was granted to the Noticees on September 19, 2025. On the day of the hearing, Mr. Prakash Shah, Mr. Keyur Shah and Mr. Kushal Shah, Authorized Representatives of the Noticees ("**AR"**) appeared on behalf of Noticee No. 1 to 12 and reiterated the submissions filed vide letters dated September 17 and 18, 2025.

7. During the hearing, the AR submitted that the company name KKP denotes *Kutch Kadva Patidar*, a company formed by select group of persons which are members of *Kutch Kadva Patidar Samaj*. The members of the Patidar Samaj are farmers holding land in Kutch and the equity shares were allotted only to the members of Patidar Samaj and not to public at large. During the time, Noticee No. 3 (i.e Mr. Damji Hirjibhai Patel) was the Managing Director and as per the Board of Resolution passed on July 10, 2010 he was responsible for the compliance of provisions of Companies Act 1956 and allied Rules for the issue of shares during the relevant time. The AR further submitted that the Company is in the process of refunding the shareholders and sought to submit further evidence to show that the allotment

was made only to the members of Patidar Samaj and not otherwise. The Noticees were granted time till October 4, 2025 to make additional submissions. The submissions received in the matter dated September 15, 2025, September 17, 2025, September 18, 2025 and post-hearing submission dated October 4, 2025 are summarized as under:

a) *Brief profile of the Company:* The name KKP denotes *Kutch Kadva Patidar* i.e. the company is formed by selected group of persons who are members of *Kutch Kadva Patidar Samaj*. The word *Marketing* denotes marketing of agricultural products produced in agriculture farms of members of Patidar Samaj. The Members are farmers and holding land in Kutch. The agri-produce of such farmers were processed through and branded through KKP. KKP was incorporated for the welfare of the farmers of the Patidar Samaj.

b) *Inordinate Delay in initiating the proceedings:* The present SCN is issued after a gap of almost 11 to 15 years from the period of allotment (FY 2010 - 2011 to 2013 - 2014). There is an inordinate delay in initiation of proceedings by SEBI which has caused great prejudice to the Noticees. As the company has ceased operation since many years all the records are not available with the Company. In this regard, Noticees have placed reliance on the various orders in the matter of *H B Stockholdings Ltd. Vs SEBI; Mr. Rakesh Kathotia Vs SEBI; Ashok Shivlal Rupani Vs SEBI; Jolly Plastic Industries Ltd. Vs SEBI; Pooja R Tikmani & Ors. Vs SEBI; Anil Kumar & Ors. Vs SEBI; Apollo Tyres Ltd. Vs SEBI; BRD Securities Ltd. Vs SEBI; Bharat J Patel & Ors. Vs SEBI ; Shriram Insight Share Brokers Ltd. Vs SEBI; Ashok Shivlal Rupani Vs SEBI; Ashlesh Gunvantbhai Shah Vs SEBI; Morepen Laboratories Ltd. Vs SEBI ; Mr. Rajeev Bhanot & Ors. Vs SEBI.*

c) *Issuance of equity shares by KKP:* As per the object for which the company was established, it was decided that the issue of further equity shares would only be made only to the members who are a part of the Patidar Samaj. The shares would be allotted to those members who have registered their name/ family members and had expressed their intention and interest to subscribe to the equity share capital of the company. The Board of directors further deliberated and decided that since the object of the company is to facilitate the members of Patidar Samaj, therefore, the shares will be issued and transferred only to the members and not otherwise. Pursuant to the incorporation of the company and after being granted Certificate of Commencement of Business, the Board

of directors passed a Board Resolution whereby Noticee No. 3 was given the authority to carry out the entire process for the issue of shares.

d) *Discrepancy in the number of shares issued by the Company:* There is a mismatch between the details of paid-up share capital as per the financial statements of the company and allotted shares as per the SCN. The total for shares allotted for FY s 2010 - 2011 to 2013 - 2014 as per SCN comes to Rs. 6,57,28,625/-. However, factually, as on the financial year ended March 31, 2024, the paid-up share capital (in respect of fully paid-up shares) of the Company was Rs. 5,40,75,000/-. There is also a mismatch in the number of share allotted as per the SCN and the financial statements. Therefore, the details as mentioned in the financial statements ought to be considered in the present subject matter. Consequently, the total number of allottees as mentioned in the SCN is not correct.

e) *Officer who are in default as per Section 5 of the Companies Act, 1956:* Noticee No. 3 was the Managing Director of Noticee No. 1 w.e.f. May 24, 2010. Noticee No. 3 was responsible for the day-to day affairs of the Company. To the best of their understanding all the shares allotted in the FY 2010-2011 to 2013-2014 were in due compliance of the law and the utilization was in due compliance of the law and the funds were utilized for the object which it was raised. In this regard, the Noticees have placed reliance on the following Orders– (i) State of Haryana Vs. Brij Lal Mittal and Others; (ii) Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi and others; (iii) Sayanti Sen Vs. SEBI; (iv) SEBI Order in the matter of Amazan Capital Limited; (v) Pritha Bag Vs SEBI; (vi) Bakul Ramniklal Parekh & Others; and (vii) P.G. Electroplast Ltd. & Others Vs. SEBI.

f) *No public issue in terms of the Companies Act, 1956:* Section 67(3) of the Companies Act, 1956 is not applicable in the present case. Noticees had delivered/issued these forms to only the *members* and no application form have been given to any other individual. Section 67(1) provides that any offer of shares or debentures to any section of the public or clients of the issuer shall be deemed to be an offer to the public. In the same way, Section 67(2) provides that any invitation to subscribe for the shares or debentures to any section of the public or clients of the issuer shall be deemed to be an offer to the public. The provisions of Section 67(1) and 67(2) are subject to the provisions contained in Section 67(3). Section 67(3) carves out an exception to the principle mentioned in Section 67(1) and (2) that an offer or invitation to a section of the public or clients is a public

issue. Section 67(3) provides that an offer or invitation is not treated as public offer if any one of the following conditions is satisfied: (a) If the offer or invitation can be regarded 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 such offer or invitation; or (b) If the offer or invitation can be regarded otherwise as being domestic concern of the persons making or receiving the offer or invitation. The main aspect in Section 67 is the determination of the fact as to whether there is a public offer or not and whether issuance of shares is by way of offer or invitation. The three important ingredients laid down in section 67 to consider a private placement as a public offer are: (a) There has to be an offer or invitation. (b) Such offer /invitation has to be made by the company. (c) It has to be made to 50 or more persons. It is pertinent to mention that if any one of these three conditions is not satisfied, such 'private placement' cannot be considered as 'public offer' by way of deeming fiction under the first proviso to Section 67(3). In this regard the Noticees has submitted that: (a) the company did not circulate any document, material or pamphlet so as to make any offer or invitations to any subscriber of the shares. (b) the company delivered/issued these forms to only members and therefore there is no contravention of the Companies Act and/ or SEBI Rules and Regulations; (c) no advertisement, nor any sort of communication was made in writing; (d) The shares were issued only to the members that were a part of the Patidar Samaj. Thus, the shares issues cannot be treated as Public Offer.

g) *Exit Offer:* In the Settlement Order of SEBI dated April 1, 2025 in the matter of *MRN Chamundi Canepower and Biorefineries Private Limited*, a Settlement Application was filed in the matter wherein it was contended that an exit opportunity be provided to the eligible shareholders. The Settlement Order deals with exit offer and not refund. Similar opportunity ought to given to the Noticees to provide its shareholders with an exit offer.

h) *Refund:* The Noticees have already started refunding the amounts to the shareholders who are members of *Kutch Kadva Patidar Samaj*, however are scattered all across India i.e. Maharashtra, Gujarat, Delhi, West Bengal, Orissa, Rajasthan, Chhattisgarh, Goa etc. It is taking time to reach each and every shareholder, gather their KYC details and refund the monies. Presently Noticees have refunded monies to around 63 shareholders concerning 11.96 lakh shares.

i) *SEBI Circulars dated December 31, 2015 and May 3, 2016:* Noticee No. 1 is not a listed entity and were completely unaware of the said SEBI circular and also no intimation was received by the Noticees from SEBI and/ or Stock Exchanges. In the FY 2012-2013 and 2013-2014, the shares were allotted to less than 200 persons as specified in the Companies Act, 2013. The Noticees would have provided exit to the shareholders at that stage itself. In respect to the equity shares allotted in the FY 2011-2012, there is only 1 allotment on March 16, 2012 of mere 22,500 shares were allotted to 3 persons and therefore there cannot be any adverse findings with respect to the shares allotted in the FY 2011-2012.

j) *SCN silent on direction proposed:* Section 11 and 11B of the SEBI Act have been used by SEBI variously to issue an extremely wide range of directions, purporting to act in the interests of the investors and the securities market. It is incumbent for SEBI to provide notice of what specific measure SEBI is contemplating, so that we are able to present our case on the suitability/ appropriateness or otherwise of the specific measure proposed. In *Gorkha Security Services v. Govt. of NCT of Delhi & Ors., (decided on 04.08.2014),* the Hon'ble Supreme Court ruled that it would be incumbent for a show cause notice to contain the exact nature of the measure that it proposes to take, failing which, the order passed would be violative of the principles of natural justice and would be liable to be set aside. In *Royal Twinkle Star Club Private Ltd v. SEBI, (decided on 03.02.2016),* the Hon'ble Tribunal reiterated the principle laid down by the Hon'ble Supreme Court in *Gorkha Security Services v. Govt. of NCT of Delhi & Ors*.

k) The complaint by Mr. Babulal Patel by which the entire proceeding was initiated is nothing but a black mail against the company and its directors just to extract some money and is using SEBI as a tool for the same. The promise of dividend and returns as contended by the complainant is totally incorrect and untenable. The complainant has not attached any evidence, documentary or otherwise, to establish that the company or any of the directors fraudulently extracted money from people.

**Consideration of Technical objections and Findings:**

8. I have carefully considered the allegations made in the SCN, materials available on record and the replies/submissions of the Noticees. I deem it appropriate to first deal with the technical objections raised in this matter.

*Delay/Laches:*

9. First such contention is about delay in initiating the instant proceedings. Based on the documents available on record and the submissions of the Noticees, the sequence of events leading to the issue of SCN are noted as follows:
   a. **FY 2010-2011, 2011-2012, 2012-2013 and 2013-2014** – Issuance of equity shares and allotments made.
   b. **August 2021 –** Complaint was filed to SEBI regarding the issuance of equity shares by Noticee No. 1 during the above FYs.
   c. **November 2021, January 2022, February 2022, March 2022, May 2022, November 2022, December 2022 and February 2023 –** Correspondence and reminders to respond sent by SEBI seeking information/details with respect to the allotment.
   d. **December 15, 2021, March 5, 2022, June 6, 2022, June 30, 2022, January 9, 2023 and March 9, 2023 -** Responses from Noticee No. 1.
   e. **September 2024 -** Approval of proceeding by the Competent Authority.
   f. **November 2024 –** SEBI issued SCN.

10. It is a matter of record that all the impugned allotments of equity shares by Noticee No. 1 were duly disclosed on the MCA portal and were within the notice of RoC, it can be only inference by constructive notice to SEBI. In the instant matter, the examination in the matter was taken up after a complaint was filed to SEBI in August 2021. Pursuant to the receipt of the complaint, SEBI started correspondence with company in November 2021. Despite multiple correspondence and reminders sent by SEBI, the company and directors submitted incomplete submissions to SEBI till March 2023. After about six months, the initiation of proceeding was approved during September 2024 and the SCN was issued on November 26, 2024 i.e, within two months. Given that the inquiry was initiated upon receipt of the complaint and the SCN was issued within two months from the approval of the instant proceedings, I do not agree with the objections of delay in issuance of SCN.

*Inspection of documents*:

11. Pursuant to the inspection of documents, vide letter dated July 29, 2025, the Noticees had sought additional documents in order to file their reply in totality. The Noticees were informed that the copy of the Examination Report along with the Annexures were already provided during the inspection. As all documents which are relied upon in the proceedings has already been provided, the Noticees were advised to file their reply to the SCN.

12. However, the Noticees, while contending that all the documents as requested by them have not been provided, have placed their reliance on the cases viz; – (i) T Takano v. SEBI & Anr. (Civil Appeal No. 487-488 of 2022); (ii) Price Waterhouse v. SEBI (Civil Appeal No. 6003-6004 of 12); (iii) Yatin Pandya HUF v. SEBI (Appeal No. 719 of 2021); (iv) B Ramalinga Raju v. SEBI (Appeal No. 286 of 2014); (v) Ms. Smitaben N Shah v. SEBI (Appeal No. 37 of 2010). I note that the Examination Report along with the Annexures and all the relied upon documents were provided to the Noticees and there is no exclusion of any relevant documents. Moreover, the basis of allegation in the extant matter pertains to the issuance of equity shares by the Noticee No. 1 and the forms and records filed by the Noticee No. 1 to the Registrar. The papers and documents of such issuance are accessible in the records of the company.

13. In this context, it may be true that the principles of natural justice entails giving Noticees an opportunity to defend them and that has been duly done. While dealing with such contentions as a matter of routine, the most decisive and crucial factor is whether any legally vested 'right' ever accrued in favour of the Noticees, which SEBI could not have despoiled behind their back. It is settled that such violation cannot be alleged in the absence of demonstrable prejudice, particularly where no foundational right of participation exists. In this case, all the relevant documents have been provided to the Noticees and no material is being used which is not in their possession and they have not demonstrated any case otherwise and the request is just a formality. I hasten to add the guidelines given by Hon'ble Supreme Court that the extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case.[1] Hence, in my view, the Noticees assumptions are misplaced and I hold that principles of natural justice has been duly complied with in this case.

*Discrepancy on number of shares issued by the company and the details of share allotment as provided by SEBI:*

[1] *Bishambhar Prasad v. Arfat Petrochemicals Pvt. Ltd. and others; Union of India v. P.K. Roy (1968) 2 SCR 186,*

14. The Noticees have submitted that there is a mismatch between the details of paid-up share capital as per the financial statements of Noticee No. 1 and allotted shares as per SCN. The Noticees have contended that the total for shares allotted for FYs 2010 - 2011 to 2013 2014 as per SCN comes to Rs. 6,57,28,625/-, however, factually, as on the FY ended March 31, 2024, the paid-up share capital (in respect of fully paid-up shares) of the Company is Rs. 5,40,75,000/-. The Noticees have further contended that there is also a mismatch in the number of shares allotted as per the SCN and the financial statements of the company. I note that at the time of examination, SEBI had also observed that the details of shares issued under public issues by Noticee No. 1 as available on the MCA website was different from the data submitted by Noticee No. 1 to SEBI. However, for the purposes of the SEBI examination, the data available on the website of MCA was relied upon by SEBI. The same is stated at paragraph. 3.7.8 of the SCN. Further, upon completion of the examination by SEBI, I find that a reference was made to the Registrar of the Companies – Ahmedabad (RoC- Ahmedabad) in respect of the mismatch in data pertaining to allotments of shares by the company as filed with the MCA. Thus, for the purpose of determining the violations in the matter, I am inclined to adopt the data as available on the MCA website which is also adopted while framing the charges in the SCN.

*Exit offer:*

15. The Noticees have made a reference to the Settlement Order of SEBI dated April 1, 2025 in the matter of *MRN Chamundi Canepower and Biorefineries Private Limited* wherein, during the financial years 2005-2006, 2010-2011, 2012-2013 and 2013-2014, the company had allotted equity shares to farmers in violation of Section 67(3) of the Companies Act, 1956. The Noticees have contended that the Settlement Order makes a reference to exit offer and not refund. Therefore, a similar opportunity ought to be given to the Noticees to provide its shareholders with an exit offer.

16. I note that in the above captioned matter of *MRN Chamundi Canepower*, the applicant in its settlement application had informed SEBI that, as sanctioned by National Company Law Tribunal (**NCLT**) an exit opportunity was provided to the existing eligible shareholders. On completion of exit offer, the applicant had also filed a petition with NCLT, Bengaluru Bench, for compounding of the offence under Section 67(3) of the Companies Act, 1956 and NCLT, Bengaluru Bench, had passed an order levying a compounding fee of Rs. 64,88,000/- and disposed of the said petition. I note that the Settlement Order is specific to

the facts of that case and not applicable in the instant matter. The instant proceeding is under section 11(1), 11(4) and 11B (1) of the SEBI Act, the Noticees did not avail settlement mechanism as per the SEBI (Settlement Proceedings) Regulations, 2018. There is no exit offer sanctioned by NCLT nor there is anything on record to show that the Noticees have made an application for compounding of the offence under Section 67(3) of the Companies Act, 1956.

*SCN silent on direction proposed:*

17. Noticees have contended that section 11 and 11B of the SEBI Act have been used by SEBI variously to issue an extremely wide range of directions, purporting to act in the interests of the investors and the securities market. In this regard reliance has been placed upon the judgment of Hon'ble Supreme Court in *Gorkha Security Services Vs. Govt. of NCT of Delhi & Ors.(2014) 9 SCC 105*. On a perusal of the said judgment of the Hon'ble Supreme Court, I find that the same is factually distinguishable from the facts of the present case. In Gorkha Security case, the matter pertained to blacklisting of a contractor by a government agency, which resulted in depriving the contractor from entering into any public contracts with government, thereby violating the fundamental right of equality of opportunity in the matter of public contract of such person. In *Gorkha Security* Case, blacklisting of the contractor was provided in the governing contract itself as a penalty to be imposed in case of breach of terms of contract, whereas, in the present matter the provisions of law clearly lays down what penalties could be imposed.

18. The SCN clearly indicates the specific nature of violations and details the provisions under which the desired directions could be issued. The specific allegations were unambiguously conveyed to the Noticees and they were given opportunities for tendering their responses thereto which they have availed. Noticees are well aware of the direction to be issued in the matter and they have also filed their reply to contend that why such direction should not be issued in the present case. The provision of Sections 11 and 11B of the SEBI Act vest in the quasi-judicial authority plenary power to issue wide ranging directions as it may deem fit, in the interest of investors and for orderly development of the securities market. Accordingly, the said contention raised by the Noticees is untenable both on facts and on law. The Noticees have also placed reliance on Hon'ble SAT order in *Royal Twinkle Club Pvt. Ltd. Vs. SEBI - SAT Appeal No. 436 of 2015 decided on February 3, 2016*, which was in relation to the unregistered Collective Investment Scheme matter. In the said matter,

Hon'ble SAT has examined the Gorkha Security case extensively and specifically recorded in the order that "*However, applicability of the judgment of Hon'ble Supreme Court in the case of Gorkha to the facts of present case need not be gone into.....*".

**Consideration of case on merits:**

19. Having dealt with the preliminary objections, I now proceed to deal with the merits of the allegation. Briefly stated, the following allotments of equity shares are the basis of this case as described in Table -3 of the SCN:

| Sr. No. | Date of Allotment | No. of Allotments | No. of shares Allotted | Total Nominal Amount (₹) | Total No. of Allottees |
|---|---|---|---|---|---|
| **Financial Year 2010-11** | | | | | |
| 1 | July 14 2010 | 1 | 10,57,500 | ₹ 1,05,75,000.00 | 96 |
| 2 | September 29 2010 | 1 | 6,60,000 | ₹ 66,00,000.00 | 36 |
| 3 | September 30 2010 | 1 | 7,35,000 | ₹ 73,50,000.00 | 70 |
| 4 | October 09 2010 | 1 | 1,28,055 | ₹ 12,80,550.00 | 18 |
| 5 | October 15 2010 | 2 | 4,72,500 | ₹ 47,25,000.00 | 2 & 50 |
| 6 | December 15 2010 | 2 | 5,70,000 | ₹ 57,00,000.00 | 25 & 45 |
| 7 | January 21 2011 | 1 | 7,35,000 | ₹ 73,50,000.00 | 84 |
| 8 | February 27 2011 | 2 | 2,64,445 | ₹ 26,44,450.00 | 29 & 6 |
| | **Total** | **11** | **46,22,500** | **₹ 4,62,25,000.00** | **461** |
| **Financial Year 2011-12** | | | | | |
| 9 | March 16 2012 | 1 | 22,500 | ₹ 2,25,000.00 | 3 |
| **Financial Year 2012-13** | | | | | |
| 10 | April 10 2012 | 2 | 15,000 | ₹ 1,50,000.00 | 1 & 1 |
| 11 | February 08 2013 | 2 | 30,000 | ₹ 3,00,000.00 | 1 & 2 |
| 12 | March 30 2013 | 2 | 4,32,500 | ₹ 57,65,225.00 | 40 & 28 |
| 13 | March 30 2013 | 2 | 4,70,000 | ₹ 62,65,100.00 | 40 & 40 |
| | **Total** | **8** | **9,47,500** | **₹ 1,24,80,325.00** | **153** |
| **Financial Year 2013-14** | | | | | |
| 13 | April 13 2013 | 1 | 1,20,000 | ₹ 15,99,600.00 | 18 |
| 14 | April 16 2013 | 1 | 1,40,000 | ₹ 18,66,200.00 | 16 |
| 15 | April 20 2013 | 2 | 50,000 | ₹ 6,66,500.00 | 5 & 3 |
| 16 | April 27 2013 | 2 | 1,37,300 | ₹ 18,30,209.00 | 12 & 10 |
| 17 | May 31 2013 | 2 | 62,700 | ₹ 8,35,791.00 | 5 & 11 |
| | **Total** | **8** | **5,10,000** | **₹ 67,98,300.00** | **80** |

20. Admittedly, the allotments were made before coming into force of the Companies Act 2013 (w.e.f. 12.09.2013), Companies (Prospectus and Allotment of Securities) Rules, 2014 (2014 Rules) and SEBI circular CFD/DIL3/18/2015 dated December 31, 2015 read with SEBI circular DIL3/CIR/P/2016/53 dated May 03, 2016. The applicable law at the relevant time was the Companies Act, 1956.

21. The Noticees have contended that Section 67(3) of the Companies Act, 1956 is not applicable in the present case and to consider a private placement as a public offer under section 67, three ingredients have to be met i.e. there has to be an offer or invitation, such offer/invitation has to be made by the company and it has to be made to 50 or more persons. The Noticees have submitted that in the instant matter- (a) the company did not circulate any document, material or pamphlet so as to make any offer or invitations to any subscriber of the shares; (b) the company delivered/issued these forms to only members and therefore there is no contravention of the Companies Act and/ or SEBI Rules and Regulations; (c) no advertisement, nor any sort of communication was made in writing; and (d) the shares were issued only to the members that were part of the *Patidar Samaj*. Therefore, the allotment of shares to a select group of members cannot be treated as a public offer.

22. The provisions of section 67(3) as amended on December 13, 2000 provided a rule of interpretation for public issue. This apart, the law under the Companies Act, 1956 was treating an offer is a prospectus that was *"issued generally"* as in the case of *Sahara India Real Estate Corporation Limited & Ors.Vs. SEBI (Civil Appeal no. 9813 and 9833 of 2011).* All the relevant sections *viz*; section 60, 72 and 73 of the Companies Act, 1956 applied to a prospectus '*issued generally'* as defined in Section 2(22) of the Companies Act, 1956. This expression means, in relation to a prospectus, that the document is issued to persons irrespective of their being existing members or debenture holders of the body corporate to which the prospectus relates. It refers to an invitation or prospectus being sent to the public at large, rather than being restricted to a private group of existing shareholders or creditors.

23. The provisions of Section 67(3) which is not a substantial provision but a rule of interpretation are as following: -

*"(3) No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or subsection (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 the non-banking financial companies or public financial institutions specified in section 4-A of the Companies Act, 1956."*

24. Section 67(3) of Companies Act, 1956 provides for situations when an 'offer'/ 'invitation' is not considered as offer to public. As per the said sub-section, if the 'offer' is one which is not 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, if the offer is the *domestic concern* of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures.

25. It is noted that as per the first proviso to Section 67(3) Companies Act, 1956 inserted w.e.f. December 13, 2000, such private placement of shares or debentures was restricted to 49 persons. In other words, if offer /invitation is made to 50 or more persons, it ceases to be a private placement and becomes 'public issue' attracting the requirement of compulsory listing under Section 73 of the Companies Act, 1956. In this regard, the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited case (Supra) &*, while examining the scope of Section 67(3) of the Companies Act, 1956 has stated as under:

*"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. ...*

*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.***

*....*

*90. I may, therefore, indicate, subject to what has been stated above, in India that any share or debenture issue beyond forty nine persons, would be a public issue attracting all the relevant provisions of the SEBI Act, regulations framed thereunder, the Companies Act, pertaining to the public issue...."*

[Emphasis Supplied]

26. I further note that the term 'private placement' was not explicitly defined under the Companies Act, 1956 and any offer which was not a public offer as per above section 67(3) was considered to be a *'private placement'*. The law provided in the above section 67(3) explained that an *offer or invitation to subscribe for shares or debentures* **made to fifty persons or more** shall be deemed to be a public issue.

27. Here, it is relevant to refer to section 42 of the Companies Act, 2013 that falls in Part II of Chapter III of the Companies Act, 2013 which deals with private placement of securities by companies. Section 42(1) is an enabling provision. Subsection (2) of Section 42, *inter alia*, declares that a 'private placement'– (a) shall be made only to a select group of persons who have been identified by the Board of Directors, and (b) whose number shall not exceed the number of offerees beyond fifty or such higher number as may be prescribed, in a financial year. Thus, if a company which intends to make a private placement, cannot offer or invite to subscribe or issue of its securities to persons more than the prescribed number. Sub- section (3) of section 42 provides for requirements of placement offer and application to be in prescribed manner. Explanations III added after sub-section (3) defines 'deemed offer to public' as under:

*"If a company, listed or unlisted, <u>makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons,</u> whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside*

*India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter."*

28. For the purposes of section 42, Rule 14(2) of the 2014 Rules, prescribes that an offer or invitation to subscribe securities under private placement shall not be made to more than two hundred persons in the aggregate in a financial year. All these provisions are prospective in nature and repeal and saving provisions under section 465 of the Companies Act, 2013 cannot be applied to extend new laws *ex post facto* to past allotments unless section 42 itself provides for retrospective operation which it does not do. Admittedly, the SCN makes allegation against the Noticees on the basis that since the allotments were made before this limit of 200 came into effect, the limit of 49 persons as per the Companies Act, 1956 is applicable in the instant case.

29. At the first blush it may appear that on only seven instances the number 50 allottees were breached (i.e allotment dated July 14, 2010, September 30, 2010, October 15, 2020, December 15, 2010, January 21, 2011 and March 30, 2013) as the requirement of aggregate number was not applicable in the Companies Act, 1956. However, when seen holistically it is noted that this a unique case in a sense that all the allotments have been made by the Noticee No.1 pursuant to purported Extraordinary General Meetings ("**EGM**") of its shareholders. There is no evidence of issuance of any Notice of concerned EGMs making adequate disclosures as required under section 171 of the Companies Act. 1956. The element of offer or invitation is, thus, in built in the frequent and repeated resolutions. For example, in resolution of EGM dated held on June 10, 2010 it was unequivocally declared that '*Share Application form with offer letter will be sent to only those who have registered their names'.* In this regard, I also rely upon a similar case of *Neesa Technologies Limited vs. SEBI (Appeal No. 311 of 2016),* wherein vide order dated April 28, 2017 Hon'ble Securities Appellate Tribunal held that in terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and SEBI Regulations, merely because issues were made in multiple tranches and no tranche exceeded 49 people has no meaning. This is not a case of one of allotment to less than 50 persons rather the sequential, regular and repeated allotments had been made. Hence, I do not agree that the some of the allotments that were made to less than 50 persons are not part of a larger scheme in the facts and circumstances of this case.

30. The Noticees have also submitted that abbreviation of the company "KKP Marketing" denotes *Kutch Kadva Patidar* i.e. the company is formed by selected group of persons who are members of *Kutch Kadva Patidar Samaj*. The word '*Marketing'* denotes marketing of agricultural products produced in agriculture farms of members of Patidar Samaj. The Members of *Patidar Samaj* are farmers and holding land in Kutch. The agri-produce of such farmers are processed through and branded through KKP and that the company was incorporated for the welfare of the farmers of the *Patidar Samaj*. On perusal of the Memorandum of Association (**MoA**) of the company, I note that the "main object of the company to be pursued by the company on its incorporation" is to - *"To carry on the business as manufacturers representatives, agents, traders, dealers, exporters, importers, buyers, sellers, factors, consignors and consignees of all kinds, types and sizes of articles, goods, merchandise and commodities such as computer hardware, software, electronic and electrical goods, footwear, gift articles, garments and clothes, fabrics, decorative, glass equipment, glassware, crockery, blankets, all types of woollen items, furniture, fixtures and light fittings, equipment, tools, machineries, plastic materials, packing materials all types of industrial, agricultural and mineral products, vegetable products, all classes and kinds of medical apparatuses, instruments, appliances, injections, and tools wooden, cement, drugs, medicines, steels, ferrous and non-ferrous metals, solvents, vegetable oils, mining products and all types of chemical and all types of consumer and industrial products whether domestic, commercial, industrial, agricultural, defence purpose/use in India or elsewhere."*

31. The MoA of the company also lists the objects incidental or ancillary to the attainment of the main object of the company. In the minutes of the copy of the EGM held on June 10, 2010 for issue of equity shares the board of the company had stated that the object of allotment was to facilitate the members of the *Kutch Kadva Patidar Samaj.* The relevant paragraph from the EGM is reproduced as under –

"*SPECIAL BUSINESS:*

*ITEM NO. 1: ISSUE OF EQUITY SHARES ON PRIVATE PLACEMENT BASIS:*

*The Chairman informed the member that pursuant to the discussion held at the meeting of* ***Kutch Kadva Patidar Samaj,*** *the Board of Directors of the company decided to issue further equity only to those members who have registered their name/ family members expressing intention to subscribe to the Equity Share capital of the company.* ***The Board***

***has further decided that the object of the company is to facilitate the members of the Kutch Kadva Patidar Samaj, no issue and transfer of shares will be accorded only to the members of Kutch Kadva Patidar Samaj and not otherwise.*** *On acceptance of below mentioned Special Resolution by the members, the Share Application form with offer letter will be sent to only those who have registered their names."* [Emphasis Supplied]

32. Thus, the MoA of the company does not make any reference to the Noticees contention that the company was incorporated for the welfare of the farmers of the *Patidar Samaj*. The name *Kutch Kadva Patidar Samaj* or *Patidar Samaj* is not cited anywhere in the MoA or in the object or incidental or ancillary to the attainment of the main object of the company. The Noticees have submitted that "marketing" denotes marketing of agricultural products produced in agriculture farms of members of *Patidar Samaj*, however, from the MoA it appears that the company was doing various kinds of businesses and marketing of agriculture products was not the primary activity of the company. Be that as it may, the applicable law after amendment in 2000 made it clear that no specific exemption is made for issuance made to a particular community or group. Thus, the contention that the shares were not available for subscription and only issued to registered members farmers of the *Patidar Samaj* does not stand if offer and allotment are made to more than 50 persons. It is also an admitted fact that the allottess are not limited to a particular geography and are residing in different part of the country.

33. Although it is settled position that offer and allotment of shares to 50 or more persons is a public issue irrespective of the fact that the offer is made to domestic concern or employees or known members of a group, the Noticees have failed to demonstrate their claim that the allotments in questions were made only to members of *Patidar Samaj*. In *Sahara India Real Estate Corporation Limited (Supra)* it was also held that under Section 67(3) of the Companies Act, 1956, the burden of proof is entirely on the Noticees to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged. In respect of the impugned issuances, the Noticees have not placed any material to show that the allotment was in satisfaction of Section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Admittedly, the allottees are scattered all across India i.e. Maharashtra, Gujarat, Delhi, West Bengal, Orissa, Rajasthan, Chhattisgarh, Goa etc. Therefore, I find that the said issuances cannot be considered as private placement.

34. In view of the above facts and circumstances, the above issues and allotments as detailed in the SCN were made by Noticee No.1 in contravention of the following provisions of the Companies Act, 1956 and ICDR Regulations: -

(a) As per section 2(36) of the Companies Act read with Section 60 thereof, before making a public offer /issuing the prospectus, the company must register its prospectus with the RoC. As per Section 2(36), '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. As the aforesaid offers of shares were deemed public issues of securities, the company was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956 which it has failed to do.

(b) Section 56(1) of the Companies Act, 1956 provides for every prospectus issued by or on behalf of a company to state the matters specified in Part I and set out the reports specified in Part II of Schedule II of the 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, containing disclosures as specified. In this case, admittedly, the company, neither did issue a prospectus nor the application form along with abridged prospectus and no disclosures as required under the Companies Act, 1956 or ICDR Regulations were made at all.

(c) As mandated under Section 73 of the Companies Act, 1956, the share issued to public (50 or more persons) must to be listed on a recognised stock exchange. The company is required to make an application to one or more recognised stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been sought for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants. Further, Section 73(3) of the Companies Act, 1956, *inter-alia*, mandated that monies received from applicants shall be kept in a separate bank account. In this case, these mandatory requirements have not been complied with.

(d) As per Regulation 4 of the ICDR Regulations no public issue can be made unless application for listing of shares on the recognised stock exchange has been made and agreement with depository has been made for decartelisation of shares.

(e) As per Regulation 5 of the ICDR Regulations, the issuer must appoint a registered merchant banker for managing the issue and registrar to issue for handling post issue responsibilities;

(f) The draft offer document must be filed with SEBI as required under Regulation 6 of the ICDR Regulations.;

(g) As per Regulation 7 of the ICDR Regulations, the issuer must obtain in- principle approval of the recognised stock exchange;

(h) Issuer must comply with eligibility requirements laid down in Regulation 26 of the ICDR Regulations;

(i) The promoters of the issuer must contribute not less than twenty per cent. of the post issue capital as required in Regulation 32 of the ICDR Regulations;

(j) As per Regulation 32 of the ICDR Regulations minimum promoters' contribution shall be locked-in for a period of three years from the date of commencement of commercial production or date of allotment in the public issue, whichever is later;

35. In this case none of these requirements have been complied with.

36. The Noticees have claimed that they are in the process of refunding the amounts to the members of *Kutch Kadva Patidar Samaj*, who are scattered all across India i.e. Maharashtra, Gujarat, Delhi, West Bengal, Orissa, Rajasthan, Chhattisgarh, Goa etc. Presently, the Noticees have refunded back monies to around 63 shareholders having more than 11.96 lakh shares. The Noticees have also submitted that the Company is facing multiple problems and is also entangled in multiple litigation including the "Income Tax Search Operation". Due to said issues, the company has closed down its operations since many years. They have also stated that the shareholders are aware of difficulty faced by the company and have no objection whatsoever in accepting only the principal invested amount from the company and have themselves waived entitlement to additional interest on the said invested amount. In support the Noticees have enclosed affidavit from 76 such shareholders. Additionally, significant time has also lapsed since the shares were allotted to the shareholders.

37. I note that the complaint in question was made to SEBI claiming to be made for 607 shareholders. The complaint raised several issues relating fraudulent money mobilisation; false promise of listing on stock exchange and higher dividend; misappropriation of fund

of the company for buying properties in the individual name of directors; etc. Further, that the company engaged in real estate business against the declared object of engaging into marketing of agricultural products and help community's farmers. The AGMs of the Company were never conducted and none of the directors of the company had informed shareholders about any AGM. The minutes, if any, of the AGM or any such meetings are false, fabricated and concocted by the directors of the company. Further, during the assessment/survey conducted by the Income Tax Department in the year 2012-2013, several irregularities and discrepancies were found, in as much, several benami transactions were also found and appropriate actions have been taken against the company by Income Tax Department. In spite of the above, on perusal of the balance sheet as on March 31, 2019, no liabilities were shown against the company. The company has thereby breached the law and defrauded more than 607 shareholders.

38. It is matter of record that SEBI has limited its examination to possible non-compliance of the public issue norms. Accordingly, I have no material to form an opinion on other aspects. The matter is more than 15 years old and allottees have taken risks based on promises made to them and have become members of the company. However, since the monies have been raised in contravention of law, the Noticee No.1 cannot be allowed to hold the monies raised in contravention of law. The consequences of section 73 (2) of the Companies Act, 1956 must follow and the monies must be refunded to the allottees with prescribed interests. The interests prescribed in section 73(2) is statutory liability and cannot be waived.

39. I am also conscious of the fact that the principles of proportionality and manifest arbitrariness are *sine qua non* for such proceedings as the present one. For exercising the choice to issue directions in the peculiar facts and circumstances of this case, I have also been guided by the principles of consistency. As held by Hon'ble Supreme Court in the matter of *SEBI v. Sunil Krishna Khaitan* (Decided on 11-7-2022) that *consistency is a matter of occupational effectiveness, giving rise to substantive legitimate expectation then departure should not be made irrationally or on perverse grounds by the SEBI.* I note that in similar cases SEBI does not invoke section 11(4A) and 11B (2) of the SEBI Act. For instance, in the matter of Sarvoday Agro Power Ltd (SEBI Order dated July 31, 2025), no penalty provision was invoked. Nonetheless, the power under 11(4A) and 11B (2) of the SEBI Act was inserted by the Finance Act, 2018 with effect from March 8, 2019 and the

violation pertain to allotments made in FYs 2010-11, 2012-13 and 2013-14. Hence, I do not deem this case fit to impose monetary penalty.

40. As per the SCN, the following persons were the directors of Noticee No. 1 during the relevant time:

| Sr. No. | Director Name | Designation | Date of Appointment | Date of cessation |
|---|---|---|---|---|
| 1. | Jayantbhai Karamshibhai Patel (Noticee No. 2) | Director | 24/05/2010 | 20/08/2011 |
| 2. | Damji Hirjibhai Patel (Noticee No. 3) | Director | 24/05/2010 | 28/01/2013 |
| | | Managing Director | 28/01/2013 | - |
| 3. | Prakash Harji Mavani (Noticee No. 4) | Director | 24/05/2010 | - |
| 4. | Hitesh Gangaram Patel (Noticee No. 5) | Additional Director | 09/04/2011 | 27/09/2011 |
| | | Director | 27/09/2011 | - |
| 5. | Shantilal Kanjibhai Patel (Noticee No. 6) | Additional Director | 27/09/2011 | 11/06/2010 |
| | | Director | 11/06/2010 | - |
| 6. | Shankar Lal Patel (Noticee No. 7) | Director | 09/04/2011 | - |
| 7. | Kanthilal Premji Patel (Noticee No. 8) | Additional Director | 31/08/2011 | 27/09/2011 |
| | | Director | 27/09/2011 | - |
| 8. | Suresh Ladharam Patel (Noticee No. 9) | Additional Director | 09/04/2011 | 27/09/2011 |
| | | Director | 27/09/2011 | - |
| 9. | Gaurang Khetabhai Patel (Noticee No. 10) | Additional Director | 31/08/2011 | 27/09/2011 |
| | | Director | 27/09/2011 | - |
| 10. | Saurabh kumar Amrutbhai Patel (Noticee No. 11) | Additional Director | 09/04/2011 | 27/09/2011 |
| | | Director | 27/09/2011 | - |
| 11. | Leeladhar Gunwantbhai Patel (Noticee No. 12) | Additional Director | 31/08/2011 | 27/09/2011 |
| | | Director | 27/09/2011 | - |
| 12. | Valji Patel (Deceased on 8/4/2021) | Additional Director | 9/04/2011 | 27/09/2011 |
| | | | 27/09/2011 | 8/4/2021 |

41. The SCN has alleged that entire Board of Directors (consisting of Noticee No. 2 to 12) are 'officers in default' as per section 5 of the Companies Act, 1956 and are deemed to be liable for the violation of Noticee No. 1. Section 5 of the Companies Act, 1956, defines an '*officer who is in default*' and includes a managing director, whole time director, manager, secretary, any person in accordance with whose directions or instructions the Board of directors of the company is accustomed to act, etc.

42. Sections 56(1) and 56(3) read with Section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company and every person who is a party to the non-compliance of issuing the prospectus as per the said provision.

43. The Noticees have contended that pursuant to the incorporation of the company on May 24, 2010 and after being granted Certificate of Commencement of Business on June 9, 2010, the Board of Directors passed a Board Resolution whereby one Mr. Damji Hirjibhai Patel i.e. Noticee No. 3, was given the authority to carry out the entire process for the issue of shares. The extract of the Board Resolution dated July 10, 2010 is reproduced as under:

*"RESOLVED THAT the Company would issue shares for the growth and expansion of the Company. The Company would have to carry out the process for issue of shares as per Companies Act) 1956.* ***For the purpose the Company does exclusively hereby authorise Mr. Damji Hirjibhai Patel, Director to carry out the entire process for the issue of shares.***

***The said Director would be completely responsible for the compliance of the provisions of Companies act, 1956 and allied rules.***

***RESOLVED FURTHER THAT the Company does hereby authorise Mr. Damji Hirjibhai Patel, Director for the said processes and hence he would be responsible for any act of non-compliance on behalf of the Company;"*** [Emphasis supplied]

44. The above Board Resolution dated July 10, 2010 records that the company would issue shares for the growth and expansion of the company as per Companies Act 1956 and for this purpose the company *exclusively* authorises Noticee No. 3 to carry out the entire process for such issue of shares. The Resolution further specifies that Noticee No. 3 would be completely responsible for any act of non- compliance of the provisions of Companies Act, 1956 and the allied rules. The minutes of the EGM dated June 10, 2010 was signed by Noticee No. 3 who was the chairman of the meeting. I also note from the minutes of all the EGMs for the impugned allotments that Noticee No. 3 was the Managing Director of the company and also had chaired its meeting. I further note from the copies of Form 2 filed with RoC by the company that the same were digitally signed by Noticee No. 3. Thus, Noticee No. 3 being the Managing Director of the company had been in charge of the

company and responsible for all its activities including the issue and allotment of shares and he is certainly liable for the contraventions as found in this case.

45. As regards the liability of directors the Hon'ble SAT in the matter of *Manoj Agarwal vs. SEBI* (Appeal no. 66 of 2016), decision dated July 14, 2017 held that :–

*"...Fact that appellant had merely lent his name to be a director of BREDL at the instance of Mr. Soumen Majumder and for becoming a director of BREDL the appellant had neither paid any subscription money to BREDL and the fact that the appellant was not involved in the day to day affairs of BREDL would not absolve the appellant from his obligation to refund the amount to the investors in view of the specific provisions contained in Section 73(2)read with Section 5 of the Companies Act, 1956. Admittedly, the appellant was a director of BREDL when amounts were collected by BREDL in contravention of the public issue norms and there is nothing on record to suggest that any particular officer/director was authorised to comply with the public issue norms. In such a case, all directors of BREDL including the appellant would be "officer in default" under Section 73(2) read with Section 5of the Companies Act, 1956...."*

46. In *Pritha Bag vs. SEBI* (Appeal no. 291 of 2017), decision dated February 14, 2019, SAT held that –

*"12. ....Unless and until a finding is given that the appellant is an officer in default, the mandate provided under Section 73(2) cannot be invoked against the appellant. In the instant case, the appellant has annexed documents to indicate that the company had a managing director, namely, Mr. Indranath Daw and, therefore, as per the provisions of Section 5 the managing director would be an officer in default. We also find that there is no finding given by the WTM that the appellant was the managing director or whole time director or was a person charged by the Board with the responsibility of compliance with the provisions of the Companies Act and, consequently, could not be made responsible for refunding the amount under Section 73(2)."*

*...This Tribunal held that in the absence of any finding that the appellant was entrusted to discharge his functions contained in Section 73 of the Companies Act and in the absence of any material to show that the said appellant was entrusted to discharge as an officer in default as set out in Clauses (a) to (c) of Section 5 of the Companies Act, the said appellant could not be penalized under Section 73(2) of the Companies Act. The said decision is squarely applicable in the instant case."*

47. In Sayanti Sen vs. SEBI (Appeal no. 163 of 2018), SAT on August 09, 2019 held that :–

*"27. Thus, the WTM was required to arrive at a specific finding that a Director or Directors were responsible for the acts of the Company. The mere fact that a person is a Director would not make him automatically responsible for refund of monies under Section 73(2) of the Companies Act.*

*28. In the light of the aforesaid, we find that the WTM has given a categorical finding that Shri Shib Narayan Das was responsible for the affairs of the Company. It was not open for the WTM to pass further orders on the other Directors, namely, the appellant especially when there is no finding nor there is a shred of any evidence to indicate that the appellant was also responsible for the affairs of the Company."*

48. In the matter of *Adi Cooper vs. SEBI* (Appeal No. 124 of 2019), SAT on November 5, 2019 held that the appellant who was a Whole Time Director was neither directly or indirectly involved in any fraudulent activity nor employed any scheme to defraud any shareholder or investor and therefore cannot be held liable merely because he was party to a resolution of the Board of Directors.

49. From the materials available on record, it can safely be concluded that Noticee No. 3 was *exclusively* authorized to carry out the process for issuance of shares. As stated in the resolution dated July 10, 2010, Noticee No. 3 was responsible for compliance of the provisions of the Companies Act, 1956. Moreover, Noticee No. 3 was the Managing Director and the chairman of all the EGM where the decision to issue equity shares were made. He had also signed Form 2 for the return of allotment made to RoC. Thus, considering the principle laid down by Hon'ble SAT with respect to liability of directors, it is clear that the Noticee No. 3 failed to comply with the provisions of the Companies Act, 1956. Noticee No. 3 is, thus, 'officer in default' in terms of section 5 of the Companies Act, 1956 and hence Noticee No.1 and 3 are liable to refund the monies to the allottees.

50. I note that while the SCN has alleged that entire Board of Directors are 'officers in default' as per section 5 of the Companies Act, 1956 and have deemed to be liable for the violation of the company, the SCN however does not bring out any material to show the role of Noticee No. 2 and 4 to 12. There is no material available on record to suggest that apart from Noticee No. 3 there was any particular officer/director involved with the issuance of securities. Moreover, the Noticees have demonstrated in the instant case that the Board of

Directors had passed a resolution specifically to carry out the process for issue of shares as per the Companies Act, 1956. In the said resolution, Noticee No. 3 was *exclusively* authorized to carry out the issue of shares and was responsible for any act of non-compliance on behalf of the company. The resolution further stipulates that Noticee No. 3 would be completely responsible for the compliance of the provisions of the Companies Act, 1956 and allied rules. In light of the above, I am inclined to give benefit of doubt to Noticee No. 2 and 4 to 12. However, Noticee No. 2 and 4 to 12 shall be vicariously responsible to ensure compliance of direction by Noticee No. 1 and shall be liable for any non-compliance of directions by Noticee No. 1, if any.

**Directions:**

51. Considering the aforesaid observations and findings, I, in exercise of the powers conferred upon me under sections 11(1), 11(4), 11A and 11B (1) read with section 19 of the SEBI Act, do hereby issue the following directions:

51.1. Noticee No. 1 and 3 shall, forthwith refund the money to the investors, jointly and severally, collected by the Company through the issuance of equity shares in FY 2010-11, FY 2012-13 and FY 2013-14 with an interest of 15% per annum, from the eighth day of collection of funds, to the investors till the date of actual payment;

51.2. Noticee No. 1 and 3 shall issue a 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 the details of contact person such as names, addresses and contact details, within 15 days of coming into force of this direction;

51.3. The repayments and interest payments shall be effected only through Bank Demand Draft or Pay Order or electronic fund transfer or through any other appropriate banking channels, which ensures audit trails to identify the beneficiaries of repayments;

51.4. Noticee No. 1 and 3 are prevented from selling the assets, properties and holding of mutual funds / shares / securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized bank. Such proceeds shall be utilized for the sole purpose of making refunds to the investors till full refund as directed above is made.

Further, the banks are directed to allow debit only for the purpose of making refunds to the investors of the issuance of shares to the Escrow Account, as directed in this order, from the bank accounts of the Noticee no. 1 and 3;

51.5. After completing the aforesaid repayments, Noticee no. 1 and 3 shall file a report of such completion with SEBI addressed to the "Regional Director, SEBI Bhavan, Western Regional Office, Panchavati Society, Gulbal Tekra, Ahmedabad, Gujarat 380006," within a period of 15 days, after completion of three months from the coming into force of the directions, duly certified by an independent Chartered Accountant.

51.6. Noticee No. 2 to12 shall ensure compliance of above directions by Noticee No.1 and shall be liable in case of default by it in this regard;

51.7. In case of failure to comply with the aforesaid directions, SEBI, may on the expiry of three months from the date of this Order:

i. recover such amounts, from Noticee No. 1 and 3 in accordance with Section 28A of the SEBI Act, 1992;

ii. initiate appropriate action against the Noticees including adjudication and/or prosecution proceedings against them, in accordance with law;

51.8. Noticee No. 1 and 3 are directed not to, directly or indirectly, access the securities 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 (four) years from the date of completion of refunds to investors as directed above.

52. The direction for refund above, does not preclude the investors to pursue the other legal remedies available to them under any other law, against refund of money or deficiency in service before any appropriate forum of competent jurisdiction.

53. A copy of this order shall be sent to all the Noticees, recognized Stock Exchanges, banks, depositories and Registrar and Transfer Agents of mutual funds to ensure that the directions given above are strictly complied with. 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.

54. This order shall come into force with immediate effect.

55. The SCN dated November 26, 2024 is accordingly disposed of

**Date: January 30, 2026**
**Place: Mumbai**

**Santosh Shukla**
**Quasi-Judicial Authority**
**Securities and Exchange Board of India**