

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**  
**CORAM: S.K. MOHANTY, WHOLE TIME MEMBER**

**ORDER**

**UNDER SECTIONS 11(1), 11(4) AND 11B (1) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992.**

**In respect of:**

<b>Noticee no.</b>	<b>Name of the Noticees</b>	<b>PAN</b>
1.	Kelvin Fincap Limited	AAACD1881H
2.	Surekaben K Shah	BORPS0804Q
3.	Vishal Kumar Shah	AYBPS0534J
4.	Bavik Satish Badani	ALRPB9295L
5.	Bipin Bhikhabhai Patel	AIDPP3653M
6.	RFL International Limited	AAACR9384B
7.	Narendra R Shah	AAPPS6559P
8.	Rajni Gitaye	AWMPG6377L
9.	Jayshree Shankar Bhosle	AFMPB0449P

**IN THE MATTER OF KELVIN FINCAP LIMITED**

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee nos. and collectively as “Noticees”, unless the context specifies otherwise)

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1. Based on a preliminary inquiry into the scrip of Kelvin Fincap Limited (hereinafter referred to as “**KFL/Kelvin/the Company**”), Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), passed an *interim* order dated August 14, 2014 (hereinafter referred to as “***interim order***”) whereby 44 entities were restrained

from accessing the securities market and were further prohibited from buying, selling or dealing in securities market, either directly or indirectly, till further directions. The said 44 entities also included Noticee nos. 1 to 6 and Noticee no. 9 of the present proceedings. The aforesaid directions passed vide *interim order* were confirmed vide order dated March 31, 2015 (hereinafter referred to as “**the confirmatory order**”) against 42 entities, including the Noticee nos. 1 to 6 and Noticee no. 9 as pointed out above. The aforesaid orders were passed pending further investigation in the matter.

2. An investigation into the scrip of Kelvin was conducted for the period of November 30, 2011 to May 29, 2014 to ascertain *inter alia* of any possible violation of applicable laws including non-compliance of provisions by the Company while making the preferential allotment dated March 20, 2012. The following facts were observed during the investigation:

- i. The scrip of the Company is listed on BSE India Ltd. (hereinafter referred to as “**BSE**”) w.e.f. July 04, 1985 and till July 04, 2012, the Company was known as Dahyabhai Sons Ltd.
- ii. On March 20, 2012, the Company had made a preferential allotment (hereinafter referred to also as “**PA**”) of 1,30,00,000 shares at the rate of Rs. 10 per share.
- iii. Based on the information gathered from different entities including the Registrar & Share Transfer Agent of the Company (“**RTA**”), it was *prima facie* observed that under the preferential allotment, the Company had issued shares to more than 49 entities. The said fact was in contradiction to the disclosure made by the Company to BSE in terms of which it had intimated that the shares under PA were allotted to only 49 entities.
- iv. The Company had submitted that it had originally allotted shares to 49 allottees only, out of which a few applicants were allotted shares jointly. Subsequently upon receiving requests from the joint holders for splitting their joint holdings to allow them to hold shares in their respective individual names, the number of shareholders became more than 49. The Company was asked to provide certificate wise details of the shares issued by it to support the aforesaid claims made, however, the Company did not furnish the said information.
- v. In the list of preferential allottees submitted by the RTA, it has been furnished that there were total 08 instances wherein shares were allotted in joint names and out of the same, in some instances (05) request for split were received. It was thought fit to seek details/certain documents viz., copy of share certificates, application forms, allotment advice, request for split etc. with respect to those joint holders, and certain information from the entities/allottees was also sought.
- vi. After analysing/verifying the information so gathered from the Company, RTA as well as from the allottees, it was observed that out of 08 instances as claimed

wherein shares were allotted in joint names, only in 01 instance, the claim of joint allotment of shares was noticed to be genuine.

- vii. It was also observed that another set of (04) entities, who were not shown as initial allottees by the Company, were also having shares in their names issued on the date of allotment itself, i.e., March 20, 2012. The RTA had claimed that these four persons/shareholders had bought shares basically from another set of two persons who were shown and disclosed as the original allottees and it was because of subsequent transfer of shares from those two person, the number of shareholders became four (04) as stated above.
- viii. In the above background, the total number of allottees to whom shares were allotted by the Company were noticed to be more than number 49, as against the claim of having been allotted to 49 entities only.
- ix. Further, the investigation also revealed that with respect to certain allottees, the payment was received by the Company even before the date of EGM wherein the approval for preferential allotment was granted by the Board of Directors. And in few cases, the allottees submitted that they had paid money to the Noticee no. 6, which was connected to the Noticee no. 1, while Noticee no. 7 (ex-Director of Noticee no. 6) was dealing with the RTA on behalf of both Noticee no. 1 as well as Noticee no. 6.
- x. The Noticee nos. 8 & 9 were the authorised signatories on behalf of the Company to sign the share certificates.

3. In view of the aforesaid factual outcome in the course of the investigation, a common Show Cause Notice dated November 23, 2017 (hereinafter referred to as “SCN”) was issued to the Noticees. It has been alleged in the SCN that:

- xi. Noticee no. 1 and Noticee nos. 2 to 5 (Directors of Noticee no. 1 at the relevant point of time), had issued shares of the Noticee no. 1 to more than 49 persons under the guise of preferential allotment of its shares. Therefore, the said issue of shares allegedly had all the ingredient of a public issue in terms of the conditions stipulated under Section 67 (3) of Companies Act, 1956. The issuance/allotment of shares was alleged to be not in compliance with the extant provisions of Companies Act, 1956 and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as “**ICDR Regulations**”), governing public issue of equity shares of a company.
- xii. The Noticee no. 6, which is a connected entity of Noticee no. 1 and Noticee no.7 (ex-Director of Noticee no. 6) were also party to the issuance of shares of Noticee no.1, as many allottees had made payment to Noticee no.6.
- xiii. The share certificates issued to the investors of the Noticee no. 1 were signed by the Noticee nos. 8 and 9.

- xiv. In view of the aforesaid, the Noticee no. 1 to 9 have violated Sections 56, 60 read with 67 (3) of Companies Act, 1956 and Regulation 5 (1), 6, 7, 25, 46 and 57 of ICDR Regulations.
- xv. Further, in the process of said allotment, the Noticee no.1 has allotted shares to six entities against which, payment was received by it after the date of allotment (March 20, 2012). The said act on part of the Noticee no. 1 is in violation of Regulation 77 (1) of ICDR Regulations. Also, the Company had received payment from certain entities for preferential allotment before conducting the EGM wherein the said preferential allotment was approved by the Board of the Company

4. I note that the SCN in the present matter was served on all the Noticees by way of affixation at their last known addresses. Subsequently, personal hearing in the matter was scheduled on March 20, 2019, for which the hearing notices were issued but except for a few Noticees, the hearing notices issued to majority of the Noticees could not be served. However, no one appeared for the personal hearing on the said date. The case was again fixed for personal hearing on August 21, 2019. I find from the records that hearing notices for the said date of hearing also could not be served on a few of the Noticees. In view of the above, the another personal hearing was scheduled on October 23, 2019 and taking into account the fact that early hearing notices could not be served on few Noticees either by SPAD or by affixation, the hearing notice this time were widely published in Times of India and Maharashtra Times. However, the same did not evoke any response from the Noticees except from Noticee no. 2, who appeared in the personal hearing through her husband.

#### **Replies of the Noticees:**

5. In the present matter, it is observed that only Noticee no. 2 has filed a reply to the SCN vide her affidavit dated August 21, 2019. It has been submitted by the Noticee no. 2 that:

- a) She was neither the Director of the Company nor does she possess any document or information with respect to the Company.
- b) The persons controlling the Company might have misused her name by using fabricated documents.
- c) She had not entered into any agreement with or on behalf of the Company.
- d) Copy of her ITR for two years have also been filed.

6. During the personal hearing before me on August 21, 2019, the husband of Noticee no. 2 had appeared and submitted copies of certain documents of Noticee no. 2 like

PAN card, Aadhar card etc., which were claimed to have been given to Noticee no.7 (Mr. Narendra R. Shah) for filing of Income Tax Return on her behalf and according to the Noticee's husband, all the acts in the name of Noticee no.2 have been actually done by Noticee no. 7 only.

7. It is observed that other Noticees have neither filed any written reply nor have appeared for their personal hearing before me. Before I proceed to consider and adjudicate the charges made in the SCN, it is imperative to refer to the relevant provisions of law that have been allegedly violated by the Noticees as per the SCN, which are reproduced as under:

**Companies Act, 1956:**

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

*(1) Every prospectus issued—*

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

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

*(2) A condition requiring or binding an applicant for shares in or debentures of a company to waive compliance with any of the requirements of this section, or purporting to affect him with notice for any contract, document or matter not specifically referred to in the prospectus, shall be void.*

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

*Provided that a copy of the prospectus shall, on a request being made by any person before the closing of the subscription list be furnished to him:*

*Provided further that this sub-section shall not apply if it is shown that the form of application was issued either—*

*(a) in connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to the shares or debentures; or*

*(b) in relation to shares or debentures which were not offered to the public.*

*If any person acts in contravention of the provisions of this sub-section, he shall be punishable with fine which may extend to fifty thousand rupees.*

*(4) A director or other person responsible for the prospectus shall not incur any liability by reason of any non-compliance with, or contravention of, any of the requirements of this section, if—*

*(a) as regards any matter not disclosed, he proves that he had no knowledge thereof; or*

*(b) he proves that the non-compliance or contravention arose from an honest mistake of fact on his part; or*

*(c) the non-compliance or contravention was in respect of matters which, in the opinion of the Court dealing with the case were immaterial or was otherwise such as ought, in the opinion of that Court, having regard to all the circumstances of the case, reasonably to be excused:*

*Provided that no director or other person shall incur any liability in respect of the failure to include in a prospectus a statement with respect to the matters specified in clause 18 of Schedule II, unless it is proved that he had knowledge of the matters not disclosed.*

*(5) This section shall not apply—*

*(a) to the issue to existing members or debenture-holders of a company of a prospectus or form of application relating to shares in or debentures of the company whether an applicant for shares or debentures will or will not have the right to renounce in favour of other persons; or*

*(b) to the issue of a prospectus or form of application relating to shares or debentures which are, or are to be, in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a recognised stock exchange,*

*but, subject as aforesaid, this section shall apply to a prospectus or a form of application, whether issued on or with reference to the formation of a company or subsequently.*

*(6) Nothing in this section shall limit or diminish any liability which any person may incur under the general law or under this Act apart from this section.”*

## **60. REGISTRATION OF PROSPECTUS**

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

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

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

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

*(ii) where the persons making any report required by Part II of that Schedule have made therein, or have, without giving the reasons, indicated therein, any such adjustments as are mentioned in clause 32 of that Schedule, a written statement signed by those persons setting out the adjustments and giving the reasons therefor.*

*(2) Every prospectus to which sub-section (1) applies shall, on the face of it, -*

*(a) state that a copy has been delivered for registration as required by this section ; and*

*(b) specify any documents required by this section to be endorsed on or attached to the copy so delivered, or refer to statements included in the prospectus which specify those documents.*

(3) The Registrar shall not register a prospectus unless the requirements of sections 55, 56, 57 and 58 and subsections (1) and (2) of this section have been complied with and the prospectus is accompanied by the consent in writing of the person, if any, named therein as the auditor, legal adviser, attorney, solicitor, banker or broker of the company or intended company, to act in that capacity.

(4) No prospectus shall be issued more than ninety days after the date on which a copy thereof is delivered for registration; and if a prospectus is so issued, it shall be deemed to be a prospectus a copy of which has not been delivered under this section to the Registrar.

(5) If a prospectus is issued without a copy thereof being delivered under this section to the Registrar or without the copy so delivered having endorsed thereon or attached thereto the required consent or documents, the company, and every person who is knowingly a party to the issue of the prospectus, shall be punishable with fine which may extend to fifty thousand rupees.

### **SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009** **(“ICDR Regulations”)**

#### ***Appointment of merchant banker and other intermediaries.***

5. (1) The issuer shall appoint one or more merchant bankers, at least one of whom shall be a lead merchant banker and shall also appoint other intermediaries, in consultation with the lead merchant banker, to carry out the obligations relating to the issue.

#### ***Filing of offer document.***

6. (1) No issuer shall make,

(a) a public issue; or

b) a rights issue, where the aggregate value of the specified securities offered is fifty lakh rupees or more,

unless a draft offer document, along with fees as specified in Schedule IV, has been filed with the Board through the lead merchant banker, at least thirty days prior to registering the prospectus, red herring prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange, as the case may be.

(2) The Board may specify changes or issue observations, if any, on the draft offer document within thirty days from the later of the following dates:

(a) the date of receipt of the draft offer document under sub-regulation (1); or

(b) the date of receipt of satisfactory reply from the lead merchant bankers, where the Board has sought any clarification or additional information from them; or

(c) the date of receipt of clarification or information from any regulator or agency, where the Board has sought any clarification or information from such regulator or agency; or

*(d) the date of receipt of a copy of in-principle approval letter issued by the recognised stock exchanges.*

*(3) If the Board specifies changes or issues observations on the draft offer document, the issuer and lead merchant banker shall carry out such changes in the draft offer document and comply with the observations issued by the Board before registering the prospectus, red-herring prospectus or shelf prospectus, as the case may be, with the Registrar of Companies or filing the letter of offer with the designated stock exchange.*

*(4) The issuer shall, simultaneously while registering the prospectus, red herring prospectus or shelf prospectus with the Registrar of Companies or filing the letter of offer with the designated stock exchange or before the opening of the issue, file a copy thereof with the Board through the lead merchant banker.*

*(5) The lead merchant banker shall, while filing the offer document with the Board in terms of sub regulation (1) and sub-regulation (4), file a copy of such document with the recognised stock exchanges where the specified securities are proposed to be listed.*

*(6) The offer document filed with the Board under this regulation shall also be furnished to the Board in a soft copy in the manner specified in Schedule V.*

***In-principle approval from recognised stock exchanges.***

*7. The issuer shall obtain in-principle approval from recognised stock exchanges as follows:*

*(a) in case of an initial public offer, from all the recognised stock exchanges in which the issuer proposes to get its specified securities listed; and*

*(b) in case of a further public offer and rights issue:*

*(i) where the specified securities are listed only on recognised stock exchanges having nationwide trading terminals, from all such stock exchanges;*

*(ii) where the specified securities are not listed on any recognised stock exchange having nationwide trading terminals, from all the stock exchanges in which the specified securities of the issuer are proposed to be listed;*

*(iii) where the specified securities are listed on recognised stock exchanges having nationwide trading terminals as well as on the recognised stock exchanges not having nationwide trading terminals, from all recognised stock exchanges having nationwide trading terminals.*

***Reference date.***

*25. Unless otherwise provided in this Chapter, an issuer making a public issue shall satisfy the conditions of this Chapter as on the date of filing draft offer document with the Board and also as on the date of registering the offer document with the Registrar of Companies.*

***Period of subscription.***



46. (1) Except as otherwise provided in these regulations a public issue shall be kept open for at least three working days but not more than ten working days including the days for which the issue is kept open in case of revision in price band.

(2) In case the price band in a public issue made through the book building process is revised, the bidding (issue) period disclosed in the red herring prospectus shall be extended for a minimum period of three working days:

Provided that the total bidding period shall not exceed ten working days.

***Manner of disclosures in the offer document.***

57. (1) The offer document shall contain all material disclosures which are true and adequate so as to enable the applicants to take an informed investment decision.

(2) Without prejudice to the generality of sub-regulation (1):

(a) the red-herring prospectus, shelf prospectus and prospectus shall contain:

(i) the disclosures specified in Schedule II of the Companies Act, 1956; and

(ii) the disclosures specified in Part A of Schedule VIII, subject to the provisions of Parts B and C thereof.

(b) the letter of offer shall contain disclosures as specified in Part E of Schedule VIII

Provided that in the case of a further public offer or a rights issue, the offer document shall be deemed to be in compliance with the provisions of this regulation, if suitable references are made to the updated disclosures in the offer document referred to in regulation 51A of these regulations.

***Payment of consideration.***

77. (1) Full consideration of specified securities other than warrants issued under this Chapter shall be paid by the allottees at the time of allotment of such specified securities:

Provided that in case of a preferential issue of specified securities pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the Reserve Bank of India, the allottee may pay the consideration in terms of such scheme.

(2) An amount equivalent to at least twenty five per cent. of the consideration determined in terms of regulation 76 shall be paid against each warrant on the date of allotment of warrants.

(3) The balance seventy five per cent. of the consideration shall be paid at the time of allotment of equity shares pursuant to exercise of option against each such warrant by the warrant holder.

(4) In case the warrant holder does not exercise the option to take equity shares against any of the warrants held by him, the consideration paid in respect of such warrant in terms of sub-regulation (2) shall be forfeited by the issuer.”

8. From the perusal of the SCN, it is deciphered that the SCN primarily proceeds on the premise that the Noticee Company had issued and allotted shares to more than 49 persons in the preferential allotment dated March 20, 2012. Since, more than 49 persons were allotted shares, the said preferential allotment was allegedly in breach of proviso to Section 67(3) of the Companies Act 1956, consequently, the said

preferential allotment was a public issue and the Company was statutorily duty bound to issue shares only in compliance with Sections 56, 60, 67 (3) of Companies Act, 1956 read with relevant provisions of ICDR Regulations, which *inter alia* require registration and filing of Prospectus. In terms of the allegations made in the SCN, the core issue that arises for my consideration is whether, the issue of shares under the preferential allotment by the Noticee no. 1 on March 20, 2012 was issued and allotted to more than 49 persons and therefore was a public issue or not?

9. Before I move on to the detailed analysis of the allegations based on the available information, it is pertinent to mention here that in order to ascertain the veracity of the claims of the Company, SEBI had independently sought certain information/document from the RTA, the Company as well as from the allottees, who were claimed to have been allotted shares under the preferential allotment. However it was observed that:

- a) The Company did not furnish the information that was crucial to test its claim that the allotment was done to 49 entities only and that the number of allottees later on increased due to split of joint allotments into individual allotments. The Company has provided some limited truncated information;
- b) The RTA has furnished copies of 49 preferential applications relating to the allotment, details of preferential allottees along with the distinctive numbers, certificate numbers, copies of certificates issued to the allottees (except for 6 allottees) and copies of four letters pertaining to split of shares from joint names to individual names.
- c) The RTA has submitted only four letters requesting for split, whereas the Company during the proceedings (before issuance of SCN) before SEBI, had submitted that five of the joint allottees had requested for split of shares in their individual names;
- d) The RTA has submitted details of 49 allottees containing folio nos., name of the allottees, certificate numbers, number of shares etc. Out of the said 49 allottees, a total number of 08 were joint allottees. In 02 (two) instances, there were 03 (three) joint allottees and in 06 instances, the joint allottees were 02 (two).

**Consideration:**

10. Having considered the allegations made in the SCN, and the records made available before me, I proceed to record my findings in the following paragraphs.

11. It is an undisputed fact that the Noticee no. 1 had allotted 1,30,00,000 shares under preferential allotment at the rate of Rs. 10 per share on March 20, 2012. It was claimed on behalf of the Company that the shares were allotted to 49 entities only. Out of the said 49 allottees, certain allotments of shares were made on joint holding basis.

Subsequently, based on the requests received from the allottees who had originally applied for shares in their joint names to get their joint ownership split/bifurcated, consequential allotments of shares was made to 05 more individuals (by way of splitting up the joint holdings), thereby taking the number of allottees beyond and in excess of 49.

12. In this respect, it is observed that the Company, by choosing to not file any reply to the allegations made in the SCN and further by abstaining from attending the personal hearing, has implicitly preferred to continue to maintain its stand as taken by it before SEBI during the proceedings of *interim order*, stating that the number of allottees under the preferential allotment was within the permissible limit of 49 and the allegations against it for having breached the statutory barrier of 49 allottees is wrong and erroneous. Before I look into the factual details of the aforesaid claims of the Company and other explanation pertaining to joint allotment and subsequent split request made by the allottees, it is apt here to refer to the legal framework governing the joint allotment of shares and split/bifurcation of shares allotted under joint holding or allotted jointly to more than one person.
13. The Companies Act, 1956 provide for allotment of shares jointly in the names of more than one allottees. However, as soon as the joint holders intend to divide the shares amongst themselves and transfer their respective shares individually in the name of each of the joint holders, the same disturbs the pattern of ownership of shares of the company and attracts statutory requirement of ‘transfer of shares’, which needs to be complied with, as is followed in any ordinary case of transfer of shares in terms of the Companies Act, 1956.
14. The statutory provisions entailing the procedural requirements with respect to transfer of shares have been laid out under Section 108 of Companies Act, 1956. In terms of the said Section, to effect a transfer of shares, the transferee needs to send the share certificates along with share transfer forms, duly stamped and executed by the transferor, to the concerned company.
15. The issue of compliances with the statutory requirements with respect to split/bifurcation of joint shareholding into separate individual holdings came up for consideration before the Hon’ble High Court of Calcutta in the matter of Hemlata Saha vs. Stadmed Private Limited and others (AIR 1965 Cal 436). The Hon’ble High Court had observed that in cases of joint shareholders, the procedure prescribed for transfer of shares by filing the instrument of transfer in terms of Section 108 of Companies Act, 1956 needs to be followed.
16. Thus, from the aforesaid discussion and legal jurisprudence, I observe that the conversion of joint ownership of shares of a company into more than one individual

shareholding required adherence to the due process of transfer of shares, as prescribed under the provisions of the Companies Act, 1956.

17. In the present case, it has been claimed by the Company that shares were allotted to 49 entities only and the increase in number of allottees were basically on account of 'split' of joint applicants into individual names. I find that the justification provided with respect to split/bifurcation of shares has not been supported by the requisite document, viz. share application, share transfer form etc., so as to substantiate the explanations furnished by the Company.
18. I also note that on the one hand, the Company has claimed to have received five (05) such requests from the joint applicants, while on the other hand, the RTA has provided copies of only four (04) letters of request received by it, purportedly addressed by the joint holders requesting for splitting of their joint holding of the shares of the Company. It is further observed that the aforesaid requests for the splitting of joint holding of shares, which in effect amounted to transfer of shares in terms of Section 108 of Companies Act, 1956, were not supported by the copy of requisite transfer forms, based on which the splitting of shares was to be executed by the Company in favour of those individuals who had requested for splitting of their joint holding. Thus, in the absence of any documents furnished by the Company pertaining to 'transfer' of shares as required under the relevant provisions of Companies Act, the claim put forth by the Company that the joint allottees of preferential allotment had requested for split (bifurcation) of their shares due to which the number of shares has gone up beyond 49, is not acceptable as per the aforesaid discussions. Nevertheless, I proceed to test the veracity of the claims of the Company factually.
19. From the records available and the allegations made in the SCN, it is noted that the disputed aspects pertaining to the joint allotment of preferential shares and subsequent split of shareholding, can be broadly classified into two categories: (i) Joint allottees; and (ii) transfer of shares.

**Joint allottees:**

20. As per the information furnished by the Company, some of the allottees under preferential allotment were initially (at the time of allotment) issued shares jointly and later on, based on the requests received from a few of the joint allottees to split their joint holding into individual holding, the shares were allotted in their individual capacity/ownership. As per the information available on record, as gathered from various sources, the following allottees were initially allotted shares on joint ownership basis:

**Table 1**

<b>Sr. No.</b>	<b>Folio no.</b>	<b>Name of the Allottee (s)</b>	<b>Certificate numbers</b>	<b>No. of shares</b>
1	PRF003	Sunish B. Behl & Kavita SunishBehl (02)	5101-5153	530000
2	PRF004	Dinesh Jaiswal, Sunita D. Jaiswal & Santlal Jaiswal (03)	5154-5188	345000
3	PRF005	Subash TikkamdasMithawalla& Jignasa S Mithawalla (02)	5189-5203	150000
4	PRF006	Tasneem Iqbal Syed, Krishna M.Dawda &Prem Agarwal (03)	5204-5236	330000
5	PRF024	Kalpesh Shantilal Maru& Rachana Kalpesh Maru (02)	5567-5626	600000
6	PRF036	Zubin Kamlesh Shah & Zeenal Zubin Shah (02)	5847-5906	400000
7	PRF043	Poonam Premasagar Pasricha &Premasagar L Pasricha (02)	6037-6046	100000
8	PRF047	Rakesh Agrawal &Trapti Agrawal (02)	6112-6121	897000

21. The SCN narrates that based on the information and documents made available by the Company, the RTA and the allottees themselves, out of the above mentioned eight (08) cases of joint allotment, the documents in respect of only one case, i.e., the joint

share certificate in the name of Zubin Kamlesh Shah and Zeenal Zubin Shah (certificate numbers 5847-5886, containing 40000 shares) was found to be a genuine case of joint allotment whereas, in rest of the seven (07) cases comprising 17 preferential allottees in total, the claim of the Company (with respect to initial joint allotment) was not substantiated by the factual evidence and other material available on record, as may be observed from the case wise factual analysis made hereunder:

- a) In the case of Mr. Sunish B. Behl and Ms. Kavita Sunish Behl mentioned at Sr. no. 1 of the above Table, it was claimed by the Company that a joint allotment of total number of 5,30,000 shares was made to them which was subsequently divided into two individual shareholdings. However, the documents available on record belies its claim that the shares were first jointly allotted and subsequently bifurcated into separate individual holdings in response to the request received from the joint applicants. It is undisputed that the preferential allotment of shares was made by the Company on March 20, 2012 hence, in case of any request received for split of joint holding and issuance of shares in individual names on the basis of the said request, the date appearing on the individual share certificates should have been subsequent to the date of original allotment, but surprisingly, the date of issuance of shares to the aforesaid two individuals was also found to be March 20, 2012, i.e., same date on which preferential allotment was made, which is evidenced from the copy of those individual share certificates.
- b) Thus, the copies of share certificates indicate that the Company had allotted 1,90,000 shares to Mr. Sunish B. Behl and 3,40,000 shares to Ms. Kavita Sunish Behl on March 20, 2012 itself. The Company has not furnished the copy of share transfer form etc. to support its claim that the allotment to the above two shareholders was initially made in their joint names and subsequently, the joint holders submitted their request to split their joint holding alongwith the requisite forms for transfer of shares, and accordingly the shares were transferred to their individual names in compliance with the norms stipulated under law. The date of issuance of share certificates in the individual names of these two shareholders (after split of their joint holding) which happens to be the date of preferential allotment of shares by the Company, further compounds the problem and exposes the falsehood of the claim of the Company, since it can not so happen that on a single day, shares were allotted in joint names as well as were again issued in individual names after complying with the statutory stipulations pertaining to transfer of shares envisaged under the company law. No document in support of the so called split request from the aforesaid joint holders has been furnished to justify that the transfer in the names of individual holders was made in compliance with the relevant provisions of the Companies Act, 1956. In the absence of the same, I am constrained to conclude that the shares were actually

allotted individually to Mr. Sunish B. Behl and Ms. Kavita Sunish Behl on the preferential allotment date itself, i.e., March 20, 2012 and the explanations of the Company pertaining the subsequent split and transfer to individual names are unreliable on facts and also not acceptable on merit. Consequently, the number of preferential allottees who were allotted shares under the preferential allotment on March 20, 2012 now gets increased to 50, i.e. beyond the number 49 as claimed by the Company.

- c) Similarly, with respect to the three entities mentioned at Serial no. 2 in the table no.1 above, contrary to the Company's claim that 345000 shares were allotted to them under a joint application, it is observed from the records that the share certificates issued to each of the aforesaid three persons in their individual names was dated March 20, 2012, and each of the three entities as mentioned above was separately owning and possessing shares in his/her respective individual name from the original date of preferential allotment. For example, Mr. Santlal Jaiswal and Ms. Sunita D Jaiswal were owning and possessing 1,10,000 shares each in their respective names, whereas 1,25,000 shares were issued in the name of Mr. Dinesh Jaiswal from March 20, 2012 itself.
- d) Further, one of the so called joint applicants/allottees, Mr. Santlal D Jaiswal, vide his letter dated August 11, 2017 has informed that he did not know either Ms. Sunita D Jaiswal or Mr. Dinesh Jaiswal nor had he applied for the preferential allotment jointly with them. To support his claim, Mr. Jaiswal has furnished a copy of the share certificate which shows allotment of 1,10,000 shares in his name. Thus, the claim of the Noticee Company that it had initially made joint allotment to the above named three persons and has subsequently issued shares in the names of each of these three persons by bifurcating (splitting) the shares in individual names pursuant to request received from these three joint allottees, is patently baseless, unfounded and specious, hence ought to be rejected. In view of the same, the number of preferential allotment gets further increased by two more numbers because of the fact that the above named three distinct individuals were actually allotted shares separately in their individual names on the date of preferential allotment of shares and not thereafter, and they never held the shares of the Company jointly, as falsely claimed by the Company. Thus the total number original allottees of preferential shares now come to 52 (and not 49 as claimed by the Company).
- e) As regards the Serial no. 3 in the table 1 above, the Company has informed that it had jointly allotted 1,50,000 shares under share certificate number 5189-5203 to two individuals, viz., Mr. Subash Tikkamdas Mithawalla and Ms. Jignasa S. Mithawalla. However, vide their letters dated August 05, 2017, the said two individuals have submitted that they had made application for allotment of shares of RFL Limited (Noticee no.6) in their individual names, however, the Noticee

no. 6 had instead, offered them shares of KFL (Noticee no.1) as an alternative to its own shares and accordingly, the shares of Noticee no.1 were allotted to them, in their individual names. Here again, the copies of share certificates of KFL are all dated March 20, 2012 and the shares have been issued in the individual names of Mr. Subash Tikkamdas Mithawalla and Ms. Jignasa S. Mithawalla separately on the very day of the preferential allotment, contrary to what has been falsely claimed by the Company without any supporting evidence. Under the circumstances, another allottee is added to the list of original preferential allottees, who were issued shares under preferential allotment by the Company on March 20, 2012 taking the total number of original allottees now to 53 (and not 49 as claimed by the Company).

- f) Similar factual contradictions/variances have been found in the case of allotment purportedly made jointly to Ms. Tasneem Iqbal Syed, Ms. Krishna M. Dawda and Mr. Prem Agarwal as indicated at Serial no. 4 of the table no. 1. The Company had claimed to have made joint allotment of 3,30,000 shares together to all the aforesaid three individuals. It is noted from the records that Ms. Krishna M. Dawada vide letter dated July 13, 2017 and Mr. Prem Agarwal vide his letter received on July 14, 2017, have informed that they do not know each other. Further, Ms. Tasneem Iqbal Syed vide her letters dated July 14, 2017 and July 19, 2017 has also informed that she had independently applied for the shares of RFL Limited (Noticee no. 6) but instead was allotted shares of Dahyabhai Sons Ltd. (erstwhile name of Noticee no.1). Ms. Tasneem has also filed a copy of allotment advice dated April 04, 2012 which contain only her name as an allottee of shares. However, surprisingly, the copy of allotment advice which was submitted by the Company (through RTA) before SEBI contained names of all the three allottees viz., Ms. Tasneem Iqbal Syed, Ms. Krishna M. Dawda and Mr. Prem Agarwal. It is quite unlikely to presume that the investor might have manufactured her documents including allotment advice letter, as it will make no impact whatsoever on her stake in the Company be it as an individual allottee or joint allottee and more so, being a shareholder he/she would not deliberately put the Company in difficulty by producing a forged document. Therefore, in my view, in the absence of any documents furnished by the Company showing anything contrary to the above, the joint allotment advice letter produced by the Company cannot be relied upon as a credible piece of evidence and in the face of a strong evidence submitted by Ms. Tasneem, the explanation advanced by the Company has to be rejected as being without any merit or truth in it.
- g) As the claim of the joint allotment in respect of the above named three persons is not acceptable for the reasons cited above, the submission of a document which does not show the true and correct picture of the allotment done by the Company and is contradicted with the factual position as established by the



document furnished by the allottee herself is also not acceptable. On the face of the strong evidence available from the submissions of the aforesaid three individual shareholders who have been wrongly projected as joint shareholders by the Company, there is a strong preponderance of probability that the Company has made up the documents so as to present a joint ownership out of three unrelated and independent persons just to artificially compress the number of allottees to 49 to show compliance with the legal and regulatory requirement. It is also relevant to mention here that the despite repeated reminders, the Company has neither furnished the copy of documents as sought during investigation to support its claim of making joint allotment to the above stated three persons nor has filed any reply to the SCN rebutting the allegations made therein. The aforesaid discussion clearly indicates that all the aforesaid three individuals viz., Ms. Tasneem Iqbal Syed, Ms. Krishna M. Dawda and Mr. Prem Agarwal have been issued shares distinctively and individually under the preferential allotment and not jointly as erroneously claimed by the Company. As a result, the number of initial allottees of preferential shares now goes up by two more additions and comes to 55 (and not 49 as claimed by the Company).

- h) Moving on to Serial no. 5 in the Table no. 1 above, the Company had informed that under Folio no. PRF024, it had jointly allotted 6,00,000 shares to two individuals namely, Mr. Kalpesh Shantilal Maru and Ms. Rachna Kalpesh Maru, bearing certificate nos. 5567-5626. However, as per the copies of share certificates dated March 20, 2012 provided by the RTA during investigation, it is noted that instead of Ms. Rachna Kalpesh Maru, one Mr. Shantilal Dungarshi Maru was joint holder with Mr. Kalpesh Shantilal Maru and instead of 6 Lakh shares, both of them jointly held 2 Lakh shares under Folio no. PRF024 and certificate nos. 5567-5568. As against the above, Ms. Rachna Kalpesh Maru, who was shown by the Company as a joint holder with Mr. Kalpesh Shantilal Maru, is actually one of the individual allottees to whom 4,00,000 shares were individually allotted by the Company under Folio no. PRFR24 and certificate nos. 5569-5626. In view of the aforesaid, the Company's claim again falls on false ground with Ms. Rachna Kalpesh Maru turning out to be an individual allottee (not a joint allottee) who holds share individually and Mr. Shantilal Dungarshi Maru (instead of Ms. Rachna Kalpesh Maru) is found be a joint allottee with Mr. Kalpesh Shantilal Maru. Thus the total number of preferential allottees now further increases by one and comes to 56 (and not 49 as claimed by the Company).

### **Transfer of shares:**

22. Further perusal of the SCN shows that apart from the above cited cases of joint allotment, there are other two instances wherein discrepancy has been noticed on

comparison of the details of entities as disclosed by the Company to BSE & MCA and information furnished by the RTA. It is noticed that against the same certificate number, the names of the shareholders as disclosed by the Company and details furnished by RTA were different. The details pertaining to the said discrepancies are tabulated herein below:

**Table 2**

Sr. No.	Folio no. ( As per RTA)	Name of the Allottee ( As per RTA)	Certificate numbers ( As per RTA)	No. of shares ( As per RTA)	As per Company
1	PRF046	Jitendra Tejmal Dugar	6092-6101	100000	The Company had disclosed that Ravi Sancheti (HUF) was the original allottee against these shares.
2	PRFD46	Dhiraj Parasmal Dugar	6102-6111	100000	
3	PRFH48	Hansa Amin	6122-6123	200000	The Company had disclosed that GFL Financial India Limited was the original allottee against these shares.
4	PRFM48	Mahendra Amin	6124-6125	200000	

23. It is noted that the Company had disclosed to BSE & MCA that under Folio no. PRF046 and certificate nos. 6092-6111, it had allotted 2,00,000 shares to one Ravi Sancheti HUF. However, the relevant documents pertaining to such allotment, like share application form, allotment advice, share certificate wise details of allottees etc., were not provided by the Company in support of or to substantiate the said claim as were sought by SEBI. In this respect, on comparing the copy of share certificates as submitted by the RTA corresponding to the above noted share certificate nos., i.e., 6092-6111 disclosed to the exchange by the Company, it has been noticed that the said share certificate was not issued in the name of the Ravi Sancheti HUF but in the name of some person/entity other than what was disclosed by the Company.

24. From the RTA's record, I note that the certificates bearing nos. 6092-6101 for 1,00,000 shares( as submitted by RTA) were dated March 20, 2012, and were in the names of Mr. Jitendra Tejmal Dugar while certificate bearing nos. 6102-6111 for 1,00,000 shares were issued and allotted to Mr. Dhiraj Parasmal Dugar. Further, the Folio nos. for the shares issued in favour of the above-said two individuals were PRF046 and PRFD46 respectively. It is thus observed that the shares containing name of Mr. Dhiraj Parasmal Dugar carried the same distinctive numbers as well as certificate numbers, which were claimed by the Company to have been issued to Ravi Sancheti HUF. However, the records ostensibly indicate that all the shares which were claimed to have been issued to Ravi Sancheti HUF were in fact issued in favour of two

separate persons other than Ravi Sancheti HUF, and also on the same date on which the preferential allotment was done by the Company, i.e., March 20, 2012. The Company has also tried in vain to argue that the shares were originally allotted in the name of Ravi Sancheti HUF and it was Ravi Sancheti HUF, which subsequently transferred to Mr. Jitendra Tejmal Dugar and Mr. Dhiraj Parasmal Dugar, for which no document has been furnished in support of either the original allotment purportedly made in favour of Ravi Sancheti HUF or the subsequent transfer of shares supposedly effected by Ravi Sancheti HUF to the afore mentioned two individuals, as claimed by the Company.

25. I further note that the aforesaid Ravi Sancheti HUF, vide its email dated August 15, 2017 had informed SEBI that it did not apply for the allotment of shares of Dahyabhai Sons Ltd. (erstwhile name of Noticee no. 1) at any point of time. It again puts the claim of the Company to an unacceptably false position and questions the very foundation of its claim of having allotted preferential shares in favour of Ravi Sancheti HUF and instead, the information and documents as furnished by the RTA of the Company clearly show that the Company had not made any preferential allotment to Ravi Sancheti HUF, but to two separate individuals i.e. Mr. Jitendra Tejmal Dugar and Mr. Dhiraj Parasmal Dugar and both of them were issued and allotted 1,00,000 shares each on the date of preferential allotment.
26. Similarly, with respect to allotment to GFL Financial India Ltd. ("GFL"), it was disclosed by the Company to be one of the original allottees under the preferential allotment, however, neither the RTA nor the Company has produced the copy of share certificates in support of the said allotment in favour of GFL. The RTA has furnished only a copy of letter dated April 04, 2012 of Noticee no. 1, addressed to GFL, purportedly forwarding share certificate bearing numbers 006122-006214 (distinctive number being 12201001 to 13099000). It is relevant to mention here that GFL was an entity connected with the Noticee no. 1 as one Mr. Vishal Kumar Shah was a common Director in GFL (during February 15, 2012 to February 01, 2012) and also in Noticee no.1 (during February 20, 2012 to January 30, 2013).
27. Further, the RTA has submitted the copy of share transfer forms with respect to transfer of shares from GFL to Hansa Amin and Mahendra Amin, indicating certificate numbers as 0006122-0006125 dated March 20, 2012, to support the claim that the shares which were originally allotted to GFL were later on transferred by GFL to Hansa Amin and Mahendra Amin.
28. Insofar as details mentioned in the SCN with respect to the share transfer from is concerned, I note that in both the cases of Ravi Sancheti HUF as well as GFL Financial India Ltd., the share transfer forms carry stamp of the Company under the heading "For Office use only" and the date on such stamp was made is dated October 29, 2012. Further, the date of stamp of Registrar of Companies ("RoC") in the said

transfer forms is November 28, 2012. The said stamp with date of RoC is understandably put in terms of the requirement of Section 108 (1A) of Companies Act, 1956. The relevant part of the said Section reads as:

*“(1A) Every instrument of transfer of shares shall be in such form as may be prescribed, and -*

*(a) every such form shall, before it is signed by or on behalf of the transferor and before any entry is made therein, be presented to the prescribed authority, being a person already in the service of the Government, who shall stamp or otherwise endorse thereon the date on which it is so presented, and*

*(b) every instrument of transfer in the prescribed form with the date of such presentation stamped or otherwise endorsed thereon shall, after it is executed by or on behalf of the transferor and the transferee and completed in all other respects, be delivered to the company, -...”*

29. As can be noted from the above quoted provision that in case of transfer of physical shares (as happened in this case) the sequence of events that follows under law is that the transfer form has to be first signed & stamped by the RoC and after that the transfer form along with the signatures of transferor and transferee, has to be delivered to the Company, in order to give effect to the transfer of shares. Hence, the date of the delivery of the transfer form to the Company is always to be preceded by the date on which the same has been endorsed by the RoC, and after the Company receives the transfer form duly signed & stamped by RoC, it would process the same to effectuate the transfer of shares.
30. However as noted above, the date of stamp of RoC on the transfer form is of November 28, 2012, whereas the stamp of the Company bears the date of October 29, 2012 which goes contrary to the aforesaid legal procedure prescribed under section 108 (1A) of Companies Act, 1956 which raises strong suspicion on the claim made by the Company and renders the documents furnished by the RTA unreliable. Incidentally, it is also observed that the witnesses to the aforesaid purported transfer of shares in both the instances is an entity called ‘CM Investment’, which is based at Ahmedabad whereas the addresses of the transferors (Ravi Sancheti HUF as well as GFL Financial India Ltd.) and the corresponding transferees viz., Mr. Jitendra Tejmal Dugar & Mr. Dhiraj Parasmal Dugar and Hansa Amin & Mahendra Amin, are from Mumbai only. Arguably the difference in the locations of transferor, transferee and the witness may not be treated as a very grave issue so as to have any adverse impact on the validity of the transfer form. However, when the claim of the Company is confronted with various contradictory facts, like in the first instance, the original allottee itself (Ravi Sancheti HUF) has denied having even applied for the allotment and in the second case, the purported original allottee (GFL Financial India Ltd) did not respond to the letter of SEBI which, coupled with the irregularities in the transfer form, location of

entities are far off places, compels one to believe that the Company has not come out with clean hands with respect to the allotment of shares made to the so called two original allottees (Ravi Sancheti HUF as well as GFL Financial India Ltd.) and that the Company has tried to fabricate an explanation to mislead that each the above said two allottees have subsequently transferred their shares in favour of two separate individual share holders, viz: Mr. Jitendra Tejmal Dugar & Mr. Dhiraj Parasmal Dugar and Hansa Amin & Mahendra Amin, respectively.

31. It may be relevant here to point out that under the extant regulatory framework governing issuance of securities on preferential basis, the shares allotted to a non-promoter entity would be under a mandatory lock-in period of one year from the date of allotment [Regulation 78(2) of ICDR Regulations]. However, going by the claim put forth by the Company and from the dates of stamp of RoC as well from the dates of stamping by the Company on the share transfer forms as highlighted above, I find that the alleged transfer of shares by the two original allottees of preferential shares has been effected within a period of one year, i.e., before expiry of the applicable lock-in period, which a listed company would not allow to be effected by breaching the prescribed regulatory restriction thereby putting itself at risk. It again exposes the untruthfulness of the Company's explanation and poses a strong question mark on the claim of the Company that Mr. Jitendra Tejmal Dugar & Mr. Dhiraj Parasmal Dugar and Hansa Amin & Mahendra Amin are not the original allottees of preferential shares but are the recipient of such shares from the two original allottees (Ravi Sancheti HUF as well as GFL Financial India Ltd.) who transferred their preferential allotment in violation of the prescribed lock-in period.
32. Moreover, strangely enough the share certificates issued to the above mentioned four transferee individuals bears the date of preferential allotment itself, i.e., March 20, 2012 which again calls the bluff of the Company's claim that the shares were transferred to these individuals in the months of October-November, 2012 as seen from the stamping of the RoC and the Company on the transfer forms. Under the circumstances, the authenticity of the transfer forms referred to above appear to be highly questionable hence, they cannot be relied upon at all. To sum up, the alleged transfer of shares from the original allottees that took place within the lock-in period in violation of the relevant regulations of SEBI and the witness to such transfer hailing from an outstation location far away from the location of the parties to the transfer and moreover, the date of the share certificates belonging to the so called transferees being the date of preferential allotment ; all put together strongly demolish the claim of the Company that shares were originally issued to Ravi Sancheti HUF and GFL Financial India Ltd.
33. In addition to the above, the bank account statement of Kelvin reflects that it had received payment of Rs. 20 Lakh each from Hansa Amin on March 17, 2012 and from

Mahendra Amin on March 19, 2012 (the two persons who have been claimed to be transferee of shares from GFL Financial India Ltd.). The amount of Rs. 20.00 Lakh is the exact amount that matches with the value of 2 Lakh shares allotted @ Rs. 10 each. From the above noted payments made by the aforesaid two persons to the Company just prior to the date of preferential allotment, it is amply evident that the Company had originally allotted shares to Hansa Amin and Mahendra Amin and not to GFL Financial India Ltd as falsely claimed by the Company. Therefore, the question of GFL Financial India Ltd. transferring shares subsequently to the above named two persons, viz: Hansa Amin and Mahendra Amin as claimed by the Company/RTA does not arise at all. The above transaction in the bank account of the Company completely establishes the fact that Hansa Amin and Mahendra Amin are the original allottees of the preferential shares and the Company has fraudulently disclosed to the stock exchange (BSE) and MCA that the preferential shares were allotted and issued to only one entity i.e., GFL. Similarly, for the reasons discussed in preceding paragraphs, the disclosure made by the Company to BSE/MCA with respect to issuance of shares to Ravi Sancheti HUF was also patently false. As pointed out above, the share transfer forms presented by the Company/RTA also appears to be concocted just to support its fabricated claim of transfer of shares by the so called original allottees. Keeping the foregoing analysis and observations, I am constrained to hold that the Company had made preferential allotment to four individuals, i.e., Mr. Jitendra Tejmal Dugar and Mr. Dhiraj Parasmal Dugar (for the shares shown to be allotted to Ravi Sancheti HUF) and Hansa Amin and Mahendra Amin (for the shares shown to be allotted to GFL Financial India Ltd.).

34. Under the circumstances, the count of preferential allottees has got further increased by two more numbers as contrary to the claims of allotment of shares to only two entities (Ravi Sancheti HUF and GFL Financial India Ltd.), the shares have actually been found to have been allotted to four separate individual (Mr. Jitendra Tejmal Dugar & Mr. Dhiraj Parasmal Dugar and Hansa Amin & Mahendra Amin). Thus, the total number of preferential allottees has further increased by two and now comes to 58 (and not 49 as claimed by the Company).
35. As stated in the beginning that out of 08 instances of joint allotment claimed by the Company, no infirmities were observed in respect of 01 joint allotment. The infirmities and discrepancies noticed in respect of 05 joint allotments have been dealt with in the preceding paragraphs. I would now deliberate upon the joint allotments indicated at Serial no. 7 and 8 in the table no. 1 above, the details of which are hereunder for the sake of ready reference:

**Table 3**

<b>Sr. No.</b>	<b>Folio no.</b>	<b>Name of the Allottee (s)</b>	<b>Certificate numbers</b>	<b>No. of shares</b>
7	PRF043	Poonam Premsagar Pasricha & Premsagar L Pasricha (02)	6037-6046	100000
8	PRF047	Rakesh Agrawal & Trapti Agrawal (02)	6112-6121	897000

36. I note from the SCN that the two purported joint allottees at Serial no. 7 above have intimated SEBI that they had withdrawn their application for the preferential allotment of shares while in the other instance of joint allotment indicated at Serial no. 8 above, the two purported allottees have categorically denied having applied for the shares of the Company under preferential allotment. These two instances are dealt elaborately hereunder:

- a) The Company has claimed that it had allotted 1,00,000 shares jointly to Ms. Poonam Premsagar Pasricha and Mr. Premsagar Pasricha (hereinafter referred to as “**Pasrichas**”), under Folio no. PRF043 bearing certificate nos. 6037-6046. SEBI had sought information from the aforesaid two individuals with respect to the joint allotment of shares made to them by the Company under preferential category. The Pasrichas, vide their letters dated August 05, 2017 have informed SEBI that though they had applied for the shares of Noticee no.1, however subsequently, they withdrew their application before the due date of allotment. In support of their submission, they have also provided a copy of bank statement which indicates debit and credit entries with respect to transaction executed with the Noticee no.1. However, from the records it is noticed that shares under the preferential allotment was allotted to them in the month of March, 2012. It is not disputed that the two Pasrichas mentioned at Serial no. 7 in the above table had applied jointly to the Company for the allotment of shares under the preferential allotment and that the names of the two persons were disclosed by the Company as jointly allottee under the preferential allotment. Neither the Company, nor the record from RTA has any dispute to the allotment to the two persons under joint allottee category. Under the circumstances, the bank entries in the books of the Company showing receipt of money from the Pasrichas in March 2012 and transfer from the Company to the Pasrichas on June 26, 2012, i.e., three months after the preferential allotment was completed, would not take away the fact of allotment made to the entities in their joint names, more particularly, when the details the Company has already disclosed their names as joint allottees to the stock exchange and MCA.

b) In the other case cited at Serial no. 8 of the table above, similar instance of allotment of 1,00,000 shares is claimed to have been made jointly in the favour of Mr. Rakesh Agarwal and Ms. Trapati Agarwal under the Folio no. PRF047 and certificate nos. 6112-6121. However, when information was sought from the aforesaid two individuals, vide their email dated August 15, 2017, Mr. Rakesh Agarwal informed on his behalf as well on behalf of his spouse, Ms. Trapati Agarwal, that they had not even applied for the preferential allotment of shares of the Noticee no.1. In this case also, neither the Company nor RTA has submitted any material in support the disclosure made by the Company to BSE/MCA wherein these persons have already been shown as joint allottees under the preferential allotment. The Company has not explained as to why shares were allotted to these joint holders who have denied having made any application to the Company for any allotment of shares. Therefore, it becomes clear that the Company has allotted shares under the aforesaid Folio no. PRF047 in fictitious names projecting them as joint allottees of preferential shares.

37. Keeping the aforesaid factual details and my observations, in my view, since Ms. Poonam Premsagar Pasricha & Mr. Premsagar Pasricha and Mr. Rakesh Agarwal and Ms. Trapti Agarwal have denied to be the joint allottees under the allotment of preferential shares of the Company made on March 20, 2012 for various reasons cited by them, these persons could not have been considered by Noticee No.1 for allotment of shares by the Company or for issuance of shares in their joint names. However, for the reasons best known to the Company, it has already disclosed the above noted four persons as original joint allottees and has not been able to explain as to whom the shares under Certificate no. 6037-6046 (shown in the name of Pasrichas) and Certificate no. 6112-6123 (shown in the name of Rakesh Agarwal and Trapti Agarwal) were actually issued and allotted, if the denials made by the above noted four individuals is to be relied upon and accepted. In the absence of any explanation from the Company or the RTA to clarify the actual position, if any, in respect of the above mentioned joint allotments which have already been disclosed to the BSE and MCA, I am left with no alternative but to hold that the aforesaid two pairs of joint allottees have to be acknowledged as the actual allottees under the preferential allotment of the Company.

38. At this juncture, it is also relevant to discuss about the details of the Folio nos. allotted by the Company to the above discussed 6 cases of joint allotment as well as the 2 other cases involving the alleged transfer from single entity to two entities, as discussed in the foregoing paragraphs of this order. It was noticed that normally, the Company has been following a practice of allotting a combination of three alphabets followed by three numerals for creating a Folio no. in its share register. For example, in the case of



Mr. Sunish B. Behl, the Folio no. is PRF003 and in the case of Mr. Subash Tikkamdas Mithawalla, the Folio no. is PRF005. However, it was noticed that the Company has selectively deviated from the above practice in the case of its joint holders where, after the so called split of their joint ownership, the Folio no. has been allotted to the first holder as per the normal practice while, a different practice is followed for the Folio no. of the second holder, while transferring shares separately in their individual names after the said split. For instance, the Folio no. of Ms. Kavita SunishBehl (alleged to be joint allottee with Mr. Sunish B. Behl) is found to be PRFK03 and in case of Ms. Jignasa S. Mthawala (alleged to be a joint allottee with Mr. Subash Tikkamdas Mithawalla), the Folio no. is PRFJ05. In such cases, it is seen that the fourth character of the Folio no. is also an alphabet, which means, in case of the second holder the Folio no. has been allotted by creating four alphabets followed by two numerals. In view of the different Folio code nos. allotted to the two joint holders, one as per normal practice followed by the Company and the other by way of deviating from the said practice, I can observe that the so called joint allotment was nothing but an effort on the part of the Noticee no.1 to conceal the allotment to more than 49 persons which the Company has deliberately done to discreetly show some of the individual allottees under the garb of joint allottees who in reality, were not joint allottees but separate allottees from the date of preferential allotment itself as has been demonstrated by me while dealing with each of those joint allotment cases in the earlier part of this order.

39. The factual narrations and analysis in the foregoing paragraphs clearly suggest that the Company has advanced various reasons like subsequent split/bifurcation of original joint holding into individual holdings, transfer of shares etc., to justify that the consequent increase in the number of preferential allottees are not in violation of the applicable laws. However, as observed in the foregoing paragraphs, the number of allottees as presented by the Company to be the original allottees under the preferential allotment is not the true and correct number of persons who became the shareholders of the Company on account of preferential allotment done by the Company on March 12, 2012. My observations with respect to the actual status of each of the allottees and its consequent impact on the count of number of original allottees under the preferential allotment made by the Company, are summarised in the following table:

**Table 4**

<b>Sr. No.</b>	<b>Name of the shareholder</b>	<b>Status of shareholder as claimed by Company</b>	<b>Actual status of the shareholder</b>	<b>Impact on the number of allottees</b>
1.	Sunish B. Behl	Primary holder, holding shares jointly with Kavita SunishBehl	Individual shareholder	No impact
2.	Kavita SunishBehl	Joint holder with Sunish B. Behl	<b>Individual shareholder</b>	<b>New Entry (1)</b>
3.	Dinesh Jaiswal	Primary holder, holding shares jointly with Sunita D.Jaiswal and Santlal Jaiswal	<b>Individual shareholder</b>	No Impact
4.	Sunita D. Jaiswal	Joint holder with Santlal Jaiswal and Dinesh Jaiswal	<b>Individual shareholder</b>	<b>New Entry (1)</b>
5.	Santlala Jaiswal	Joint holder with Santlal Jaiswal and Sunita D. Jaiswal	<b>Individual shareholder</b>	<b>New Entry (1)</b>
6.	Subash TikkamdasMithawalla	Primary holder, holding shares jointly with Jignasa S. Mithawalla	Individual shareholder	No Impact
7.	Jignasa S Mithawalla	Joint holder with Subash TikkamdasMithawall	<b>Individual shareholder</b>	<b>New Entry (1)</b>
8.	Tasneem Iqbal Syed	Joint holder with Krishna M. Dawda and Prem Agarwal	Individual shareholder	No Impact
9.	Krishna M.Dawda	Joint holder with Tasneem Iqbal Syed and Prem Agarwal	<b>Individual shareholder</b>	<b>New Entry (1)</b>
10.	Prem Agarwal	Joint holder with Tasneem Iqbal Syed and Krishna M. Dawda	<b>Individual shareholder</b>	<b>New Entry (1)</b>
11.	Kalpesh Shantilal Maru	Joint holder with Rachna Kalpesh Maru	<b>Kalpesh Shantilal Maru was found to</b>	Though name of Shantilal Maru was not

			<b>be joint holder with Shantilal Dungarshi Maru</b>	disclosed, however, he is only a joint allottee and therefore no impact on the no. of allottees
12.	Rachana Kalpesh Maru	Joint holder with Kalpesh Shantilal Maru	<b>Individual shareholder</b>	<b>New Entry (1)</b>
13.	Poonam Premsagar Pasricha and Premsagar L Pasricha	Joint holders	<b>As per allottees, they had withdrawn the application filed for allotment of shares. Copy of share certificates were not provided by the Company/RTA</b>	<b>No impact</b>
14.	Rakesh Agrawal & Trapti Agrawal	Joint holders	<b>Allottees denied having applied the shares under preferential allotment. Copy of share certificates were not provided by the Company/RTA</b>	<b>No impact</b>
15.	Jitendra Tejmal Dugar	Transferee of shares (transferred from preferential allottee – Ravi Sancheti HUF)	Ravi Sancheti HUF denied having applied shares under preferential allotment. <b>Individual shareholder</b>	<b>New entry (in lieu of Ravi Sancheti HUF)</b>
16.	Dhiraj Parasmal Dugar	Transferee of shares (transferred from preferential allottee – Ravi Sancheti HUF)	Ravi Sancheti HUF denied having applied shares under preferential allotment. <b>Individual shareholder</b>	<b>New Entry (in lieu of Ravi Sancheti HUF) (1)</b>
17.	Hansa Amin	Transferee of shares (transferred from preferential allottee –	No reply from GFL. Copy of share certificates in name	<b>New Entry (in lieu of GFL)</b>

		GFL)	of GFL not provided	
18.	Mahendra Amin	Transferee of shares (transferred from preferential allottee – GFL)	No reply from GFL. Copy of share certificates in name of GFL not provided	<b>New Entry (in lieu of GFL) (1)</b>

40. As can be easily deciphered from the aforesaid table, after analysing the documents pertaining to the aforesaid shareholders of Noticee no.1, it is observed that the number of original individual allottees under the preferential allotment made by the Company will increase by a total addition of 09. Thus, the actual number of individual allottees under the preferential allotment of the Company shall now increase by 09. Resultantly, the total number of individual allottees who were allotted shares under the preferential allotment dated March 20, 2012 can now be stated at 58, the detailed list of which is tabulated herein below:

**Table 5**

Sr. No.	Folio no.	Name	Certificate No.(s)		Number of shares
			From	To	
1.	PRF001	Mukesh N Desai	5001	5050	500000
2.	PRF002	Mukesh N Oesai HUF	5051	5100	500000
3.	PRF003	Sunish B. Bhel	5101	5119	190000
4.	PRFK03	Kavita Sunish Behl	5120	5153	340000
5.	PRF004	Santlal Jaiswal	5154	5164	110000
6.	PRFS04	Sunita D. Jaiswal	5165	5175	110000
7.	PRFD04	Dinesh Jaiswal	5176	5188	125000
8.	PRF005	Subhash Tikkamdas Mithawalla	5189	5195	70000
9.	PRFJ05	Jignasa S. Mithawalla	5196	5203	80000
10.	PRF006	Tasneem Iqbal Syed	5204	5213	100000

11.	PRFK06	Krishna M. Dawda	5214	5224	110000
12.	PRFP06	Prem Agarwal	5225	5236	120000
13.	PRF007	Mukeshbhai Nanjibhai Moradiya	5237	5256	200000
14.	PRF008	Shehul Vallabhbhai Moradiya	5257	5276	200000
15.	PRF009	Dhanjibhai Shamjibhai Donda	5277	5296	200000
16.	PRF010	Hiren Tulsibhai Moradia	5297	5316	200000
17.	PRF011	Dharmesh Tulsibhai Moradia	5317	5336	200000
18.	PRF012	Bharatbhai Nanjibhai Moradia	5337	5356	200000
19.	PRF013	Vallabhbhai D Sachapara	5357	5376	200000
20.	PRF014	B D Sachapara	5377	5396	200000
21.	PRF015	Rajesh Haribhai Moradia	5397	5416	200000
22.	PRF016	Vasantben Dhanjibhai Donda	5417	5436	200000
23.	PRF017	Chhotubha Shivubha Saravaiya	5437	5456	200000
24.	PRF018	Shobhanaben Nareshbhai Moradiya	5457	5476	200000
25.	PRF019	Ramniranjan C	5477	5496	200000

		Jhunjhunwala			
26.	PRF020	Hasmukhlal R. Shah	5497	5516	200000
27.	PRF021	Ashok Jashraj Jain HUF	5517	5536	200000
28.	PRF022	Ketan Bhupendra Kumar Shah	5537	5546	100000
29.	PRF023	Shantilal Dungarshi Maru HUF	5547	5566	200000
30.	PRF024	Kalpesh Shantilal Maru Shantilal Dungarshi Maru	5567	5568	200000
31.	PRFR24	Rachana Kalpesh Maru	5569	5626	400000
32.	PRF025	Saloni Ramniklal Maru	5627	5636	100000
33.	PRF026	Manisha Pramesh Rambhia	5637	5656	200000
34.	PRF027	Nirmala Shantilal Maru	5657	5696	400000
35.	TRF028	Sejul Pratish Maru	5697	5706	100000
36.	PRF029	Mitesh Rajnikant Shah	5707	5721	150000
37.	**PRF030	Bhavini B. Fur'ia	5722	5746	250000
38.	PRFC31	Rajesh Gopaldas Vilaitramani	5747	5766	200000
39.	PRF032	Kamlesh Hari Thakur	5767	5786	200000
40.	PRF033	Jagdisr Hari Thakur	5787	5806	200000

41.	PRF034	Ashok Gopaidas Kripaiani	5807	5826	200000
42.	PRF035	Mrs Lajwanti Hari Thakur	5327	5846	200000
43.	PRF035	Zubin Kamiesh Shah Zeenal Zubin Shah	5847	5886	400000
44.	PRF037	Prameela Mohandas	58S7	5906	200000
45.	PRF038	Inventors Finance Private United	5S07	5966	600000
46.	FRF039	Deepaben Trabakbhai Makwana	5967	5981	150000
47.	PRF040	Champaben Devjibhai Makwana	5982	5996	150000
48.	PRF041	Mrs. Bhavni Bharatbhai Dangar	5997	6006	100000
49.	PRF042	Mithaial Manoharlal Sahlot	6007	6036	300000
50.	PRF043	Poonam Premasagar Pasricha & Premasagar L Pasricha	6037	6046	100000
51.	PRF044	M.V.R.S Prasad	3047	6076	300000
52.	PRF045	N. Satyanarayana	6077	6091	150000
53.	PRF046	Jitendra Tejmal Dugar	6092	6101	100000
54.	PRFD46	Dhiraj Tejmal Dugar	6102	6111	100000

55.	PRF047	Rakesh Agarwal Trapti Agarwal	6112	6121	100000
56.	PRFH48	Hansa Amin	6122	6123	200000
57.	PRFM48	Mahendra Amin	6124	6125	200000
58.	PRF049	Suryamangal Media and Entertainment Ltd	6215	6306	897000

41. In view of the aforesaid observations and findings, the claim of the Company that the preferential allotment of shares was made by it were not more than to 49 persons is remains unsubstantiated and sans any evidence. Instead, the scrutiny of the documents revealed that the Company, under the guise of making joint allotment of shares had actually breached the statutory barrier and allotted shares to more than 49 persons. Considering the fact that claim of the Company having issued shares to joint allottees in majority of the instances turned out to be false and factually not sustainable on the face of preponderance of incontrovertible materials available on records to expose the canard of the Company. I find that that in the guise of receiving joint applications/ making joint allotments and subsequent transfer/split of shares etc, the Company has clandestinely issued shares under the preferential allotment to 58 individual entities, which is more than the statutory permissible threshold limit of 49.
42. The issue that arises next for my consideration is whether the allotment of shares under preferential allotment to 58 allottees is in the nature of public issue or a private placement as has been claimed by the Company.
43. The deciding factors based on which an issue of securities can be categorised as either a public issue or private placement have been laid down under Section 67 of Companies Act, 1956. The said Section 67 is reproduced hereunder for the sake of reference:

***67. CONSTRUCTION OF REFERENCES TO OFFERING SHARES OR DEBENTURES TO THE PUBLIC, ETC***

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



(2) *any reference in this Act or in the articles of a company to invitations to the public to subscribe for shares or debentures shall, subject as aforesaid, be construed as including a reference to invitations to subscribe for them extended to any section of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*

(3) *No offer or invitation shall be treated as made to the public by virtue of sub-section (1) or sub-section (2), as the case may be, if the offer or invitation can properly be regarded, in all the circumstances –*

*(a) as not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation; or*

*(b) otherwise as being a domestic concern of the persons making and receiving the offer or invitation:*

*Provided that nothing contained in this sub-section shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more:*

*Provided further that nothing contained in the first proviso shall apply to the non-banking financial companies or public financial institutions specified in section 4A of the Companies Act, 1956 (1 of 1956).*

44. A conjoint reading of Section 67(1) and (2), as aforesaid, indicates that an offer or invitation extended by a company to a section of public for subscription to its shares/debentures shall be construed to be an offer/invitation to the public. Further, Section 67(3) envisages the situations when an offer or invitation is not considered as public offer. In terms of Section 67(3), if the offer/invitation can be properly regarded in all circumstances, of having been made available for subscription/purchase only by a person receiving such offer/invitation or if the offer is the domestic concern of the persons making and receiving the offer, such offer/invitation shall not be treated to have been made to public. Further, the first proviso to Section 67(3) restricts the applicability of Section 67(3) to a scenario wherein offer/invitation to offer has been made to 50 persons or more. Thus, to sum up, an offer/invitation to subscribe shares/debentures of a company shall remain a private placement if it is available to only those persons who have received it or it is a matter of domestic concern of the entities making and receiving such offer, subject to the outer limit of persons to whom offer has been made as 49.

45. I note that in the present case the Company had attempted to take shelter under the so called joint applicants and joint allottees to artificially restrict the number of allottees below 49. As discussed in foregoing paragraphs of this order, the explanations furnished by the Company during the investigation have not been found genuine and have all the elements of being held to be concocted, specious, factually erroneous and legally not tenable at all. From the reasons as recorded above, I am convinced that the

number of allottees under the purported preferential allotment of the Company were 58hence, certainly more than 49.

46. At this stage, I deem it apt to refer to the judgment of Hon'ble Supreme Court in the matter of *Sahara India Real Estate Corporation Limited & Ors. vs. SEBI* [(2013) 1 SCC 1], wherein after analysing the aforesaid Section 67, Hon'ble Supreme Court had observed inter alia as: “...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.”
47. Thus, applying the extant legal framework governing public issue and on the facts of the case in hand, I have already held in the preceding paragraphs that the Company had issued and allotted securities to more than 49 persons and therefore, I hold that the allotment of shares dated March 20, 2012 made by the Noticee no.1 (Company) was a ‘deemed public issue’ of its shares, as the same squarely falls within the mischief of first proviso to Section 67(3) of the Companies Act, 1956.
48. As the issue of shares by the Noticee no. 1 is held to be a deemed public issue, as a statutory consequence, the Noticee no.1 was obligated to adhere to the various compliances requirements governing such public issue including the requirements prescribed under Section 60 (filing of a prospectus with Registrar) and stating therein various details as stipulated under Section 56 of Companies Act.
49. I note that the Company was already listed on BSE at the time of making the allotment of shares under the preferential allotment on March 20, 2012. However, when the Company was raising fresh capital from public, it was under obligation to comply with all the mandatory and statutory requirements under law pertaining to such action of raising additional capital.
50. I note that Section 56 of the Companies Act, 1956 provides that a prospectus issued by or on behalf of a company shall contain details as have been specified in Part I and also sets out the reports to be filed as specified in Part II, of Schedule II of the Companies Act. The details in Part I encompasses within it general information about the company and the proposed public issue; capital structure of the company; terms of the present issue for which prospectus has been issued; and details about management of the company etc. Further, certain reports like a report by auditors of the company with respect to its profit and losses, assets liabilities etc., also need to captured in the prospectus.
51. Further, Section 60 of the Companies Act mandates that before making a public offer, a company shall register the prospectus (containing details as provided under Section 56) with the Registrar of Companies (“RoC”).

52. As the allotment of shares by the Noticee no.1 was in the nature of a public issue, the Noticee no. 1 was supposed to comply with the extant regulatory framework by filing/registering a prospectus, containing all the requisite details about itself as well as about the issue of shares, with the RoC. As per the records of the case, neither such details nor any such prospectus has been filed by the Company with RoC. Instead, it is noted that the Company has filed various false and concocted documents before SEBI to persist with its contention that the issue of shares under reference was a private placement only even though all such claims have been found to be blatantly false and misleading in nature, as has been held in the preceding paragraphs. I am, therefore, of the view that there is sufficient material available to conclude that the act of the Noticee no.1 to issue shares under preferential allotment to more than 49 persons is in gross violation of provisions of Section 56 and 60 of Companies Act, 1956.
53. I note that apart from the requirement of Companies Act, 1956, as discussed above, there are certain norms stipulated under ICDR Regulations, which are to be complied with by issuer companies coming out with public issue of its securities.
54. Regulation 5(1) of the ICDR Regulations mandates that an issuer of securities needs to appoint a merchant banker and other intermediaries, who will carry out the obligations relating to the public 'issue'. However, in the present case, undisputedly, there was no appointment of merchant banker or other intermediary, by the Noticee no. 1, for the issue of its shares on March 20, 2012. Thus, the said omission on the part of the Noticee no.1 undeniably results in violation of Regulation 5(1) of ICDR Regulations.
55. Further, regulation 6 of the ICDR Regulations prescribes for filing of offer document on behalf of the issuer of the securities with SEBI and in this respect, regulation 6(4) specifies that simultaneous to registering the prospectus (as mandated under Section 60 of Companies Act) with RoC, the issuer company shall also file a copy of prospectus with SEBI. It is noted that none of the aforesaid compliances has been made by the Company with respect to the issue of its shares under the aforesaid preferential allotment. Hence, regulation 6 of the ICDR Regulation as alleged in the SCN is also found to be violated in the present case.
56. Further, regulation 46 of ICDR Regulation prescribes a subscription period of three days during which, the public issue of a company shall remain open for subscription. In the present case, I note that the Company, in its deemed public issue of shares, has not complied with the aforesaid Regulation 46 of ICDR Regulations.
57. I have noted above that the Company has not filed any offer document with SEBI as mandated under regulation 6 of ICDR Regulations. Since no offer document was filed, the act of deemed public issuance of shares by the Company has also violated regulation 57 of ICDR Regulations, which describes the manner of disclosures in the offer document.

58. I note that the SCN also makes certain allegations with respect to the receipt of payment by the Noticee no. 1. The Noticee no. 1 had submitted a copy of its bank account statement containing details of receipt of allotment money along with a document named as 'bank statement details of receipt of allotment monies'. It was also noticed that the payment on behalf of 28 allottees was actually received by the Company from 12 separate entities and not from those 28 allottees and the said 12 entities were having connection, directly or indirectly with the Company. Further, during investigation, information with respect to the payments made to the Noticee no. 1 was sought from the 56 allottees out of which, 45 had replied. The details of payment as furnished by such 45 allottees are as under:

**Table 6**

<b>Sr. No.</b>	<b>Allottee Name</b>	<b>Date of reply</b>	<b>Date of payment submitted by entity</b>	<b>Remarks</b>
1.	Mukesh N Desai	09/08/2017	16/03/2012	-
2.	Mukesh N Desai HUF	09/08/2017	16/03/2012	-
3.	Subhash Tikkamdas Mithwalla	05/08/2017	24/02/2011	Payment was made to RFL
4.	Jignasa Subhash Mithawalla	05/08/2017	24/02/2011	Payment was made to RFL
5.	Mukesbhai Moradiya	08/08/2017	06/02/2011	Received payment prior to the approval of preferential allotment by EGM (Feb 29, 2012)
6.	Shehul Vallabhbhai Moradiya	08/08/2017	07/02/2012	Prior to approval of EGM
7.	Dhanjibhai Shamjibhai Donda	04/08/2017	27/01/2012	Prior to approval of EGM
8.	Hiren Tulsibhai Moradia	08/08/2017	31/01/2012 & 01/02/2012	Prior to approval of EGM
9.	Dharmesh Tulsibhai Moradia	08/08/2017	02/02/2012	Prior to approval of EGM

10.	Bharatbhai Nanjibhai Moradia	08/08/2017	09/02/2012	Prior to approval of EGM
11.	Vallabhbhai D Sachpara	08/08/2017	03/02/2012	Prior to approval of EGM
12.	B D Sachpara	08/08/2017	01/03/2012	-
13.	Rajesh Haribhai Moradia	08/08/2017	15/02/2012	Prior to approval of EGM
14.	Vasantben Dhanjibhai Donda	08/08/2017	28/01/2012	Prior to approval of EGM
15.	Shobhanaben N. Moradiya	08/08/2017	10/02/2012	Prior to approval of EGM
16.	Ramniranjan C Jhunjhunwala	09/08/2017	04/01/2012	Prior to approval of EGM
17.	Hasmukhlal R. Shah	09/08/2017 & 14/08/2017	10/01/2012	Prior to approval of EGM
18.	Ashok Jashraj Jain HUF	09/08/2017	02/02/2012	Prior to approval of EGM
19.	Ketan B Shah	09/08/2017	09/02/2012 & 14/02/2012	Prior to approval of EGM
20.	Mitesh Rajnikant Shah	08/08/2017	05 or 6/03/2012	Bank statement is not clear
21.	Kamlesh Hari Thakur	05/08/2017	15/03/2012	-
22.	Jagdish Hari Thakur	05/08/2017	15/03/2012	-
23.	Ashok Gopaldas Kriplani	06/08/2017	15/03/2012	-
24.	Lajwanti H Thakur	06/08/2017	15/03/2012	-
25.	Zubin Kamlesh Shah Zeenaal Zubin Shah	09/08/2017	21/03/2012	Payment made after preferential allotment
26.	Prameela Mohandas	07/08/2017	19/03/2012	-
27.	Deepaben T Makwana	08/08/2017	26/07/2011	Payment was made to RFL
28.	Champaben D Makwana	08/08/2017	26/07/2011	Payment was

				made to RFL
29.	Mithalal Manoharlal Sahlot	04/08/2017 & 09/08/2017	19/03/2012	-
30.	M.V.R.S. Prasad	14/08/2017	29/03/2012	Payment made after preferential allotment
31.	N. Satyanarayana	09/08/2017	29/03/2012	Payment made after preferential allotment
32.	Tasneem Iqbal Syed	15/07/2017 & 19/07/2017	24/02/2011	Cheque was issued to RFL International Ltd.
33.	Poonam Preamsagar Pasricha	05/08/2017	-	Poonam Preamsagar Pasricha & Preamsagar Pasricha submitted that they had applied but withdrawn for the allotment.
	Preamsagar Pasricha			
34.	Rakesh Agarwal, Trapti Agarwal	15/08/2017	-	Rakesh Agarwal, Trapti Agarwal submitted that they did not apply for allotment and have no bank account transactions with Kelvin
35.	Shantilal Jaiswal	11/08/2017 & 17/08/2017	08/02/2011	Payment was made to RFL
36.	Chhotubha Shivubha Saravaiya	16/08/2017	29/02/2012	
37.	Jitendra Tejmal Dugar	24/08/2017	22/03/2012	Payment made after preferential allotment
38.	Dhiraj Tejmal Dugar	24/08/2017	22/03/2012	Payment made after preferential

				allotment
39.	Nirmala Shantilal Maru	18/08/2017	15/03/2012	-
40.	Kalpesh Shantilal Maru	16/08/2017	15/03/2012	-
41.	Manisha Pramesh Rambhia	09/08/2017	15/03/2012	-
42.	Bhavini B. Furla	16/08/2017	15/03/2012	-
43.	Sejul Pratish Maru	18/08/2017	15/03/2012	-
44.	Shantilal Dugarshi Naru HUF	18/08/2017	15/03/2012	-
45.	Saloni Ramniklal Maru	18/08/2017	15/03/2012	-

**Payment made after the allotment:**

59. It is an undisputed fact that the EGM conducted by the Company for approving the preferential allotment was held on February 29, 2012 and the date of actual preferential allotment was March 20, 2012. Accordingly, the payment of allotment/application money was supposed to be received from the applicants by the Company during the period from February 29, 2012 to March 20, 2012. However, the investigation has unearthed instances where the consideration towards the allotment of shares was received by the Company after the date of allotment of shares by the Company.
60. As can be noted from the table above, with respect to 5 allottees, the Noticee no.1 had received payment of allotment money after the date of the allotment of shares. The said cases are mentioned at Serial no. 25, 30, 31, 37 and 38. For instance, in the case of joint allotment made to Mr. Zubin Kamlesh Shah and Ms. Zeenal Zubin Shah, the payment was received by the Noticee no.1 on March 21, 2012, i.e., 01 day after the allotment. Similarly, the payment of allotment money from Mr. M.V.R.S Prasad and N. Satyanarayana were received on March 29, 2012, i.e., 09 days after the date of allotment.
61. In this connection, it is noted that the Regulation 77 (1) of ICDR Regulations envisages receipt of payment of full consideration for the shares being allotted under the preferential allotment, at the time of allotment itself. There is no document/explanation from the Company on record which can contradict the factual position of the above instances where payment was received after the date of allotment. As noted in the beginning, the Noticee no. 1 has not filed any reply to the allegations attributed under the SCN nor has it appeared before me for personal hearing to controvert the allegations made against it in the SCN. Therefore, in the

absence of any documents or submissions advanced to the contrary so as to explain the reason or to justify the delayed receipt of payment by the Company from the allottees, I see no reason to discharge the Noticee Company from the charge of violating regulation 77 (1) of ICDR Regulations.

**Payment received before EGM**

62. It has also been observed during the investigation that the Company had received payment from as many as 14 allottees even before the decision to make preferential allotment was taken in the EGM of the Company. Ideally, there can't be any instances where payments could be received by the issuer company from the applicants/allottees either before taking the decision of making preferential allotment or after making the allotment of shares as per the allotments approved by the Company. Surprisingly enough, in the present case, as can be noted from the table above, as many as 14 allottees have remitted their allotment money to the Company even before the EGM which was conducted on February 29, 2012. The said allottees are placed at Serial nos. 5-11, 13 -19 of the aforesaid table. Since, the approval in the EGM actually led to the preferential allotment on March 20, 2012, any payment against allotment of shares which can be said to have emanated from such an approval by EGM, can be made by an allottee only after the date of EGM and has to necessarily be completed before the allotment. However, in this case, a bare perusal of the dates of payments reflects that in total, 04 allottees have made payment in the month of January 2012 and 09 allottees made such payments in the month of February 2012 and in 01 case the payment was made on January 31<sup>st</sup> and February 01, 2012, i.e., much before the allotment was finalised in favour of them by the Company and even much before the EGM could approve the issuance of shares under preferential allotment by the Company.

**Payments made to RFL**

63. I would now advert to the role played by Noticee no. 6 and 7. Noticee no. 6 is allegedly connected to Noticee no. 1 (Kelvin) as one of the Directors of Noticee no. 6 viz., Mr. Jitendra Patel shares common address with one Mr. Bipin Patel, who was Director of Noticee no. 1. Further, the website of both the Companies, viz., Noticee nos. 1 and 6 are very similar in terms of its layout, font size etc. The RTA of both the Companies was also common, i.e., Purva Sharegistry (India) Ltd., and Noticee no. 7, a past Director of Noticee no. 6 allegedly used to give instructions to the RTA on behalf of both Noticee nos. 1 and 6.
64. It is stated in the SCN that around 6 allottees of Noticee no. 1 (Serial no. 3, 4, 27, 28, 32 and 35 of the Table above) have informed that they have made payment to Noticee no. 6 against the allotment of shares to them under the preferential allotment made by Noticee no. 1. In view of this, the SCN further alleges that the Noticee nos. 6 and 7 had also a role to play in the entire game of allotment of shares to more than 49 persons by resorting to fraudulent and other unfair means.



65. I note from the records that the Noticee no. 6 is also listed on BSE and it had applied to the exchange on October 28, 2011, for in-principle approval for making preferential allotment of its (Noticee no.6) shares. Incidentally, the list of proposed allottees in the Board Resolution dated September 29, 2011, passed by the Noticee no.6 with respect to their proposed preferential allotment, also contained the names of 18 entities who were allotted shares by Noticee no. 1(Kelvin). In this regard BSE had also informed SEBI that although the Noticee no. 6 had obtained in-principle approval from BSE, it did not approach the exchange about listing of its shares supposed to be allotted under preferential allotment nor did it provide any other information regarding the same. Further, the shareholding pattern of Noticee no. 6 for the quarters ending on March, 2011 and June, 2011 did not show any change in shareholding which indicates that Noticee no.6 did not carry out its preferential allotment despite obtaining in-principle approval from BSE.
66. It is noted that the Noticee no.6 has not filed any reply to the SCN nor has appeared before me for the personal hearing. From the materials on record, it is observed that the Noticee no. 6 enjoyed close connection with the Noticee no. 1. Also Noticee no. 7 (ex-Director of Noticee no.6) was the person who was dealing with the common RTA of both the Noticee nos. 1 and 6.
67. I also observe that the allegation made against the Noticee no. 7 along with Noticee no. 6 in the SCN is that he is also equally liable for the issuance of shares by Noticee no. 1 to more than 49 persons under the said preferential allotment, apparently due to the fact that the Noticee no.7 is one of the past Director of Noticee no. 6 who used to instruct the common RTA on behalf of both Noticee nos. 1 and 6 in the matter of the said preferential allotment by Noticee No.1, hence was actively associated with the aforesaid issuance of preferential allotment. Thus, the allegation against Noticee no. 7 is largely connected with those made against Noticee no. 6 in the SCN, i.e., Noticee no 6 and 7 were both instrumental in getting the shares of KFL to be allotted to more than 49 persons.
68. It is also a fact that neither Noticee no.6 nor 7 has chosen to file any reply to the SCN refuting the allegations made against them therein and neither of them has provided any documents to support their stand if any. Moreover, neither of them has preferred to avail the opportunity of personal hearing before me. In the absence of any document or submission to the contrary, I observe that there is no reason to disbelieve the 6 allottees of Noticee no.1 who have stated during the investigation that although they had made payment to the Noticee no. 6 against the preferential shares allotted to them by Noticee no.6, they were instead allotted the shares of Noticee no.1. It goes on to prove that there existed a symbiotic nexus between the Noticee no.1 and Noticee No.6 so much so that application made for the preferential shares of Noticee no.6 was rewarded with allotment of shares from Noticee no.1. Another factor that strengthens

the allegation about active involvement of Noticee no.6 in the allotment of preferential shares by Noticee no.1 is that the payment made by the said 6 entities to Noticee no.6 exactly matched with the value of shares allotted to them by Noticee no.1 (Issue Price x No. of shares) which means that the Noticee no.6 never intended to allot its own shares to those 6 entities when it collected money from them and was very well knowing that it was collecting money on behalf of the preferential issue of Noticee no.1.

69. At this stage, I find it relevant to refer to the order of Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs. SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), wherein it is observed that: *“As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...”*
70. I have already upheld in this order that the Noticee no. 1 has allotted shares to more than 49 persons and thereby has violated the relevant provisions of companies Act and SEBI (ICDR) Regulations. It is also clear that the Noticee no. 6 had accepted payment on behalf of the Noticee no.1 from some of the entities who were allotted shares under the preferential allotment of Noticee no. 1. Further, the fact that the Noticee no. 7 was the Ex-Director of Noticee no. 6 and was dealing with the common RTA of Noticee no. 1 and 6 on their behalf in the matter of preferential allotment of shares, exposes his complicity in the issuance of shares by Noticee no. 1 in violation of above noted provisions of law.
71. Moving on to the rest of the Noticees and their role in the matter as alleged in the SCN, it is noted that the Noticee nos. 2 to 5 were Directors of the Noticee no. 1 at the relevant time, i.e., at the time of issuance of shares under the preferential allotment. The details of period of directorship held by the aforesaid Noticees are tabulated below:

**Table 7**

<b>Name</b>	<b>Designation</b>	<b>Original date of appointment</b>	<b>End date</b>
Surekaben K. Shah	Professional Director	20/02/2012	30/01/2013
Vishal Kumar Shah	Independent Director	20/02/2012	30/01/2013
Bavik Satish Badani	Professional Director	20/02/2012	12/07/2016

Bipin Bhikhabhai Patel	Independent Director	15/12/2011	12/07/2016
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72. I find that after the issuance and service of SCN and after affording opportunities for personal hearing to the notices, only Noticee no. 2 has filed a short reply and has also attended personal hearing through her husband, however, despite granting adequate opportunities, other Noticees including the Company have neither filed any reply nor have turned up for personal hearing before me.
73. Insofar as Noticee no. 2 is concerned, I have noted that she has denied being Director of Noticee no. 1 and has stated that her name has been misused by Company's management. I find that such a claim on the grounds of misuse of identity, as raised by Noticee no. 2 is merely a bald assertion not supported by any evidence and has been advanced only to avoid the likely enforcement action against her as indicated in the SCN. During personal hearing before me, the husband of Noticee no. 2 submitted that certain documents pertaining to the Noticee no. 2 were given to Noticee no. 7, who might have misused such documents without her knowledge and the Company has erroneously shown her (Noticee no.2) as a Director of Noticee no.1. However, I find that the affidavit filed on behalf of Noticee no. 2 in reply to the SCN after her personal hearing, is silent on the aspect of so called misuse of her identity and documents by anyone. It is a matter of record that the SCN was issued in November, 2017 and thus the Noticee no.2 was in cognizance of the fact that she has been imputed as one of the Directors of Noticee no.1 since November 2017. However, Noticee no. 2 has never raised any alarm about the said mis-representation of her identity as a Director of the Company and has willingly preferred to maintain a long stoic silence about it till the date of her personal hearing and even after strongly denying during personal hearing that she had ever acted as a Director of the Company, the Noticee no. 2 has failed to support her denial with any document to substantiate her claim that her identity and KYC documents have been mis-utilised by Noticee no. 7 or anyone else. In the light of my aforesaid observation, the stand taken by the Noticee no. 2 that she does not know the Company or has never transacted with it, can be termed at best an empty claim without any substance in it, hence not acceptable. Without prejudice to my observation above, the submissions of Noticee no. 2 against Noticee No.7 now further strengthens my views made above qua Noticee no. 7 that he had an active role to play in the entire exercise of preferential allotment by Noticee no.1 that turned out to be a deemed public issue of shares under law.
74. I note that a company being a separate legal entity is governed by natural persons who are in-charge of its day to day affairs. The driving force behind any move of a company

is the efforts of the Directors controlling and managing its affairs. An act on the part of the Company which results into violation of any statutory provision is bound to be attributed to its Directors or the persons who are in charge of the day to day conduct of the business of a company. Thus, the liabilities of such natural persons, for the acts and omissions while discharging the business responsibilities in the name of the company, is co-extensive with that of the Company. I note that Hon'ble Supreme Court of India, while dealing with liabilities of directors of a company in the matter of N. Narayanan vs. Adjudicating Officer, SEBI (2013) 12 SCC 152, had observed inter alia as: "...33. *Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially.*"

75. Under the circumstances, in the light of the fact that the Noticee nos. 2 to 5 were functioning as the Directors on the Board of the Company during the relevant period of time when the Company (Noticee No.1) carried out the preferential allotment deceptively in violation of various provisions of law as discussed above, and the fact that these directors were in control and command of and responsible for the conduct of the affairs, management and the business of the Company at the relevant point of time, I hold that the Noticee nos. 2 to 5 have also violated Section 56, 60 of Companies Act, 1956 read with Regulations 5(1), 6, 25 46 and 57 of ICDR Regulations, as alleged in the SCN.
76. I note that along with Noticee nos. 1 to 5, the SCN has also charged Noticee nos. 8 and 9, for the violations of provisions of Companies Act and ICDR Regulations. In this connection, I note that the basis of such allegation against them is the copy of Board resolution (provided by RTA vide its email dated August 28, 2017 during the investigation) containing names of Noticee nos. 8 and 9 as authorised signatories along with two other Directors of Noticee no. 1 viz., Ms. Kavita Shah and Mr. Keyur Shah. I note from the record that the Company had informed the RTA that Noticee nos. 8 & 9 were its employees. As observed earlier, Noticee nos. 8 & 9 have also preferred to not file any reply and not to appear before me for personal hearing granted to them.
77. It may be noted that the Noticee no. 1 had submitted to BSE a copy of Board Resolution dated March 20, 2012. Perusal of the said Board Resolution show that Mr. Mansukh Sanghvi/Mr. Bipin Patel, Directors of the Company were authorised for issuing share certificates in physical/electronic form to the allottees. Contrary to the above, from the perusal of the copies of the share certificates issued on March 20,

2012, I find that the share certificates contained the signatures of Mr. Keyur M. Shah and Mrs. Kavita K. Shah as Directors. However, as per the records of Ministry of Corporate Affairs, Mr. Keyur M. Shah and Mrs. Kavita K. Shah had already ceased to be Directors of Noticee no. 1 w.e.f January 31, 2012, i.e., more than a month before issuance of such shares.

78. On the other hand, the copy of Board Resolution as provided by the RTA during the course of investigation shows that Ms. Kavita Shah/Keyur Shah were Directors and Ms. Rajni Gitaye/Ms. Jayshree Bhosle have been shown as Authorised Signatories for the purpose of issuance of share certificate.
79. It is noteworthy that both the documents, i.e., the one provided by the Company to BSE and the one provided by the RTA to SEBI were Board Resolution of Noticee no.1 for the same date, i.e., March 20, 2012 and both of them dealt with identical subject, i.e. authorising some persons to issue the share certificates. However, the names of Directors appearing in both the resolutions were different from each other. As regards the names of authorised signatories for issue of share certificates, the same was not even mentioned in the Board Resolution provided by the Company to BSE.
80. Notwithstanding the aforesaid blatant discrepancies between the two Board Resolutions referred to above which raises a strong bonafide suspicion about the authenticity of the Board Resolutions, from the perusal of the share certificates as available on record, it is surprisingly noted that the share certificates issued by the Noticee Company carries the signatures of Mr. Keyur M. Shah and Mrs. Kavita K. Shah, despite the acknowledged fact (from the records of MCA) that both of these two persons had already ceased be the directors on the Board of Noticee no.1 not only at the time of the issuance of such share certificates but even before the decisions to make preferential allotment was made by the Noticee Company. Under the circumstances, I am of the view that the materials available on record in the present case is not sufficient enough to conclusively conclude that Noticee nos. 8 and 9 who were admittedly not on the Board of the Company at the relevant point of time, could have violated any provision of law or had any role to play along with Noticee nos. 1 to 5 in issuance and allotment of shares by KFL to more than 49 persons under the said preferential allotment dated March 20, 2012. Keeping the insufficiency of factual evidence to hold them liable for the alleged violations by the Company, Noticee nos. 8 and 9 deserve to be granted benefit of doubt and in my view, the proceedings arising out of the instant SCN qua Noticee nos. 8 and 9 ought to be disposed of without any direction against these two Noticees. However, in terms of the reasons recorded and detailed discussions made in the foregoing paragraphs of this order pertaining to role played by Noticee nos. 1 to 7, it has been satisfactorily found that the charges made against these 7 Noticees stand established based on the factual evidence and irrefutable materials available on record to hold them liable for the violations committed by them

as alleged in the SCN. Having observed that the 7 Noticees (Noticee nos. 1 to 7) have acted in defiance of law, the misconduct and breach of law displayed by them warrant to be visited by appropriate remedial as well as preventive measure in the interest of securities market and to safeguard the interest of innocent investors of the market. Therefore, the instant proceedings *qua* these 7 Noticees are disposed of with following directions.

**Directions:**

81. In view of the above, in exercise of powers conferred upon me under Sections 11(1), 11 (4) and 11B (1) read with Section 19 of the Securities and Exchange Board of India Act, 1992, in order to protect the interest of investors and the integrity of the securities market, I hereby pass following directions:

- i. The Noticee no. 1 to 5 are hereby directed not to access the securities market, directly or indirectly, by issuing prospectus, offer document or advertisement soliciting money from the public for a period of 3 years and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, for a period of 7 years.
- ii. The Noticee no. 2 to 5 are hereby restrained from holding post of director, any managerial position or associating themselves in any capacity with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of 3 years.
- iii. The Noticee no. 6 is directed not to access the securities market, directly or indirectly, by issuing prospectus, offer document or advertisement soliciting money from the public for a period of 1 year. The proceedings against Noticee no. 6 who is already under restraint placed by the *interim order* are disposed of without any further directions of debarment.
- iv. The Noticee no. 7 is hereby restrained from holding post of director, any managerial position or associating himself in any capacity with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI and is further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of for a period of 1 year.

82. It is clarified that while calculating the period of debarment issued in the above directions, the period of restraint already undergone on account of *interim order* shall be adjusted in respect of the Noticees so restrained by the *interim order*.

83. It is further clarified that during the period of restraint as directed in this order, the existing holding of securities, including the units of mutual funds shall remain under freeze.

84. Obligation of the aforesaid Noticees, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange (s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order, only in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the aforesaid Noticees in the F&O segment of the stock exchange, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.
85. The Order shall come into force with the immediate effect.
86. A copy of this Order shall also be served upon the Depositories, Stock Exchanges and Registrars and Transfer Agents for necessary action on their part.

**Sd/-**

**Date: August 31, 2020**

**Place: Mumbai**

**S. K. MOHANTY**  
**WHOLE TIME MEMBER**