

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

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

In the matter of Abhyudaya Broadcasting Limited

In respect of:

Sr. No.	Name of the Noticee	PAN
1.	Abhyudaya Broadcasting Limited	AAKCA6206B
2.	Venkatarao Sankarapu	DBOPS9877P
3.	Akshayakumar Dutta Mudunuru	ACUPM0757A
4.	Sai Babu Mandhadapu	BWAPM2006H
5.	Mulla Abdul Gafoor	BBQPG3882G
6.	Babu Rao Midiyam	AGOPM2304B
7.	Pragathi Broadcasting Limited	AAGCP6433M
8.	Nagaiah Gollapelly	BDYPG3500K
9.	Venkateswararao Yariagadda	AHXPY7474J

The entities named in the Table above shall hereinafter individually be referred to by their respective names/noticee number and shall collectively be referred to as the "Noticees".

Background

- Abhyudaya Broadcasting Limited (hereinafter referred to as "ABL"/ "the company") is a public company incorporated on May 30, 2012 registered with Registrar of Companies – Hyderabad with CIN : U92130TG2012PLC081195. Its registered office is at PNM Building, D. No: 1-7-139/48, SRK Nagar, Risalagadda, Musheerabad, Hyderabad-500020.

2. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received a complaint letter dated January 19, 2019 against ABL with respect to issue of shares. An examination was initiated by SEBI into the fund raising activity of ABL with respect to public issue of shares and to ascertain whether ABL had made any public issue of equity shares without complying with the provisions of Companies Act, 1956, Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”) read with SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 (hereinafter referred to as “ICDR Regulations”).

Show Cause Notice

3. Consequent to the completion of examination, a Show Cause Notice dated January 18, 2023 (hereinafter referred to as “SCN”) was issued to Noticees Nos. 1 to 9 in the extant matter to show cause as to why suitable directions in terms of Sections 11(1), 11(4), 11A and 11B of SEBI Act read With Regulation 107 of ICDR Regulations, 2009 should not be initiated against all the Noticees for the alleged violation of the provisions of Sections 56(1); 56(3), 60, 64(2), 67(3), 73(1) and 73(2) of the Companies Act, 1956 and Regulation 4(2) (d) and (e), 5(1), 5(2), 5(5) and 5(7), 6(1), 7, 26(1), 26(2) and 26(6), 32(1), 36, 37, 46(1), 47(1), 49(1), 57(1), 58(1) and 58(2), 63 of ICDR Regulations, 2009.

4. The facts and allegations as set out in the SCN are as follows:

4.1. On inquiry by SEBI, it was observed that ABL had not issued/filed any red herring prospectus/prospectus/ information memorandum in connection with the issuance of a total of 6,95,40,000 equity shares at a face value of ₹10/- per share, which were allotted to Noticee No. 7, namely Pragathi Broadcasting Limited (hereinafter referred to as “PBL”) on eight occasions during the period from June 20, 2012 to July 24, 2013 and raised an aggregate amount of ₹69,54,00,000/-. The details of the allotment are as given below:

Table 1

Sr. No.	Date of allotment	No. of shares allotted	Value of allotment (in ₹)
1.	20-06-2012	1,90,00,000	19,00,00,000
2.	12-10-2012	2,23,00,000	23,30,00,000

3.	07-01-2013	2,00,00,000	20,00,00,000
4.	23-01-2023	57,50,000	5,75,00,000
5.	11-02-2013	3,00,000	30,00,000
6.	16-02-2013	5,00,000	50,00,000
7.	19-03-2013	7,90,000	79,00,000
8.	24-07-2013	9,00,000	90,00,000
	Total	6,95,40,000	69,54,00,000

4.2. From the certified copies of minutes of Board Meetings of ABL held for the aforesaid allotments of shares to PBL, it was observed that a Share Transfer Committee was constituted by ABL for splitting of the allotted shares into several certificates and for subsequent transfer of shares to any third party. It was also observed from the minutes of the Board meeting of ABL that the decision for split of share certificates and transfer of shares to third party was taken on the same date when the decision to allot shares to PBL was taken. Further, the 6,95,40,000 shares issued to PBL were in turn allegedly transferred to 445 shareholders on various dates during the period from August 2, 2012 to October 24, 2013. As per the register of share transfers filed with ROC, the shares were transferred to 338 shareholders during the period from August 2, 2012 to March 15, 2013 and the remaining 107 shareholders were transferred the shares on June 24, 2013 and October 24, 2013.

4.3. The details of shares allotted by ABL to PBL and their subsequent transfers are as under:

Table 2

Sr. No.	Date of allotment by ABL	No. of shares allotted to PBL	Cumulative no. of shares allotted	Fin. Year of offer	Date of registration of share transfers by PBL	No. of shares transferred	No. of shares transferred	Cumulative No. of shares transferred
1	20-06-2012	1,90,00,000	1,90,00,000	2012-13	02-08-2012	4	8,80,000	8,80,000

2	12-10-2012	2,23,00,000	4,13,00,000		12-08-2012	11	15,20,000	24,00,000
3	07-01-2013	2,00,00,000	6,13,00,000		14-08-2012	6	7,20,000	31,20,000
4	23-01-2023	57,50,000	6,70,50,000		05-09-2012	11	20,00,000	51,20,000
5	11-02-2013	3,00,000	6,73,50,000		10-09-2012	15	20,00,000	71,20,000
6	16-02-2013	5,00,000	6,78,50,000		17-09-2012	15	20,00,000	91,20,000
7	19-03-2013	7,90,000	6,86,40,000		27-09-2012	27	39,00,000	1,30,20,000
					28-09-2012	13	15,00,000	1,45,20,000
					10-10-2012	50	48,00,000	1,93,20,000
					15-11-2012	30	41,00,000	2,34,20,000
					23-11-2012	13	55,00,000	2,89,20,000
					24-11-2012	11	76,00,000	3,65,50,000
					30-11-2012	6	20,00,000	3,85,20,000
					03-12-2012	6	17,00,000	4,02,20,000
					18-01-2012	80	1,55,50,000	5,57,70,000
					07-02-2013	8	19,50,000	5,77,20,000
					14-02-2013	10	30,50,000	6,07,70,000
					15-03-2013	22	32,03,220	6,39,73,220
				Total		338		
8	24-07-2013	9,00,000	6,95,40,000	2013-14	24-06-2013	23	31,95,780	6,71,69,000
					24-10-2013	84	23,71,000	6,95,40,000
				Total		107		

4.4. As seen from the above table, on June 20, 2012 ABL allotted 1,90,00,000 shares to PBL and during the period August 2, 2012 to September 28, 2012, PBL transferred 1,45,20,000 shares to the public. Later, after an allotment of 2,23,00,000 shares on October 12, 2012, PBL transferred 2,57,00,000 shares from October 10, 2012 to December 3, 2012, to public which includes 44,80,000 shares from the earlier allotment. Again, on January 7, 2013, ABL issued 2,00,00,000 shares to PBL out of which, PBL transferred 1,55,50,000

shares to public on January 18, 2013. On the allotment of 57,50,000 shares from ABL, PBL transferred 82,03,220 shares during the period from February 7, 2013 to March 15, 2013. On February 11, 2013, on receipt of allotment of 3,00,000 shares, PBL transferred 31,95,780 shares (this includes shares from earlier allotment) on June 24, 2013. Further, from February 16, 2013 to July 24, 2013, ABL allotted 21,90,000 shares to PBL. PBL in turn transferred all the shares remaining with it i.e. 23,71,000 shares to public on October 24, 2013. Thus, the entire allotment of 6,95,40,000 shares by ABL to PBL during the period from June 20, 2012 to July 24, 2013 was in turn transferred to public by October 24, 2013. It is thus observed that PBL started transfer of shares within one and a half months from the date of first allotment and had transferred all the shares to public within a period of six months from the date of each allotment.

4.5. As per MCA records, ABL was incorporated on May 30, 2012 and PBL on June 4, 2012. Subsequently, ABL started allotting shares to PBL from June 20, 2012 to July 24, 2013, which were in turn transferred by PBL to public during the period from August 2, 2012 to October 24, 2013. On the basis of the dates on which the allotment was made to PBL and decision was taken to subsequently transfer the same to public and also the time period within which the shares were allotted and transferred to public (i.e. within 6 months in most instances), it is alleged that ABL was well aware of the entire transactions and the allotment to PBL was only made with a premeditated view to transfer the shares to public.

4.6. ABL in their reply dated August 3, 2019 stated that, PBL held 32% of the shareholding in ABL. It is further stated, PBL raised funds from financial institutions and invested the same in the shares of ABL to set up required facilities and to have common equipment facilities to make programs. As per the terms and conditions and due to unsuccessful implementation of the project, financial institutions insisted PBL to repay the loan immediately. PBL then approached ABL for disinvestment of their investment amount. At that

point of time, various reputed trade unions, agreed to act as transferees of shares of ABL from PBL and hence PBL lodged for transfer of shares.

4.7. The decision to allot shares (first allotment), subsequent split of share certificates and transfer of shares was approved by the Board of ABL on the same date (i.e. June 20, 2012). Thus, it is alleged in the SCN that PBL had not raised funds from financial institutions but directly from the public. Further, the submission that PBL raised funds to invest in ABL to have common equipment facilities suggest that both the entities had connection and common understanding to raise funds. This allegedly indicates that both ABL and PBL were well aware of the entire transactions and in order to circumvent the applicable regulations had originally allotted shares to PBL who in turn transferred the same to public.

4.8. SCN alleges that PBL transferred the shares to a total of 445 transferees, i.e. transfer of 6,39,73,220 shares to 338 shareholders in F.Y. 2012-13 and to 107 shareholders during the F.Y. 2013-14. Hence, these transfers be treated as "Offer for Sale" to public under section 64(2) and 67(3) of the Companies Act and all the provisions concerning public issue shall equally apply to the said offer for sale. Hence, it is alleged that ABL had violated provisions of section 73(1) and 73(2) of the Companies Act, 1956.

4.9. Information submitted by the company stated that no prospectus was filed by the company with ROC nor any application was filed with any stock exchange for listing of the said shares. Since the company has not made any listing application with any of the recognized stock exchanges, despite making an offer to 50 or more persons, the same allegedly is in violation of the provisions of Section 73(1) of the Companies Act. Further, Section 73(2) of the Companies Act states that where any listing permission is not applied, the Company is required to refund all the monies received as subscription within the stipulated time. In view of the above, it is alleged that ABL has violated provisions of Section 73(1) and 73(2) of the Companies Act, 1956.

- 4.10. Failure on the part of ABL to file any prospectus with ROC before making a public offer/issuing the prospectus and transfer of shares to 338 shareholders in 2012-13 and 107 shareholders in 2013-14 is alleged to have resulted in violation of section 2(36) read with Section 60 of the Companies Act, 1956. Further, ABL alongwith the failure to file prospectus also failed to file the matters specified in Part I and reports specified in Part II of Schedule II allegedly in violation of provisions of Section 56(1) and 56(3) of the Companies Act. In addition to the above, it is also alleged that ABL has violated Regulation 4, 5, 6, 7, 26, 32, 36, 37, 46, 47, 49, 57, 58 and 63 of ICDR Regulations, 2009.
- 4.11. SEBI had issued a circular no. CIR/CFD/DIL3/18/2015 dated December 31, 2015, whereby, considering the higher cap for private placement provided in the Companies Act, 2013, in respect of earlier cases (i.e. prior to April 1, 2014) involving issuance of securities to more than 49 persons but upto 200 persons in a financial year, the companies may avoid penal action if they provide the investors with an option to surrender the securities and get the refund amount at a price not less than the amount of subscription money paid alongwith 15% interest p.a. thereon or such higher as promised to investors. The entity shall also file compounding application with NCLT and there shall not be continued violation and no pending complaints. From the submission of ABL it is noted that the company did not seem to make any efforts to refund the investors. Further, ABL had submitted that the referred circular of December 31, 2015 does not apply to them. The SCN states that, as PBL had transferred the shares to 338 persons in 2012-13 the above circular dated December 31, 2015 does not apply to ABL as the share transfer has been carried out to more than 200 persons during the financial year 2012-13.
- 4.12. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. In this case, ABL allotted shares to PBL and PBL in turn acted as an offeror of the shares to the public and hence

ABL, PBL and their respective directors are allegedly liable for violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956. Hence, Noticees mentioned at Sr. No. 1 to 9 (in the table at page 1) have allegedly violated sections 56(1), 56(3) and 60 of the Companies Act, 1956. Further, for non-compliance of Section 73(2) of Companies Act, 1956 with respect to liability to repay the money alongwith interest at the rate of not less than 4% and not more than 15%, if the money has not been repaid would be on the “officer who is in default”. In this matter, it is been alleged that Noticee no. 5 (as Chairman for the board meeting and Chairman for share transfer committee), for ABL and Noticee No. 8 (as Chairman of Board Meeting), for PBL have been considered as the “officer who is in default”.

5. In view of the above, the Noticees were called upon to show cause as to why suitable directions in terms of Section 11(1), 11(4), 11A and 11B of the SEBI Act read with Regulation 107 of the ICDR Regulations, 2009, should not be issued against Noticees 1 to 9, for the alleged violations of the provisions of Companies Act, 1956 and ICDR Regulations, 2009.

6. **Hearing and Replies**

6.1. On issuance of SCN dated January 18, 2023, both ABL and PBL, vide their letters dated February 4 and 6, 2023 sought additional time to reply to the SCN. Further, ABL and PBL submitted reply on behalf of themselves and their Directors (*Noticees nos. 2 to 6 (for ABL) and Noticees nos. 8 and 9 (for PBL)*) vide their respective replies dated February 27, 2023.

6.2. On May 3, 2023, the scheduled date of hearing, Authorized Representatives of ABL and PBL namely Shri D S Rao, Company Secretary for ABL and Shri Lokesh Agarwal, Company Secretary of PBL attended the hearing on behalf of said companies and the directors of their respective companies. Shri Rao, represented Noticees nos. 1 to 5 and Shri Agarwal, represented Noticees nos. 7 to 9. There was no representation for Noticee at sr. no.6. Post hearing submissions were provided vide reply dated June 3, 2023.

6.3. Summary of replies dated February 27, 2023 and June 3, 2023 from ABL and PBL is as given below:

Submissions of ABL:

- 6.3.1. ABL has never issued or allotted any of its shares to public or offered any shares for sale to public from the date of its inception and hence there was no requirement on the part of the company to file any red herring prospectus/ prospectus/ or information memorandum in connection with the issuance of equity shares to PBL.
- 6.3.2. The share transfer committee was constituted on June 20, 2012 for splitting the share certificates and for subsequent transfer of shares in order to have ease of administrative actions of the company, however, no shares were transferred on June 20, 2012 by the company.
- 6.3.3. Though there appears to be 338 transfers in the financial year 2012-13, the total number of shareholders are only 46 to whom 6,39,73,220 equity shares of the company were transferred. The company never had 338 shareholders anytime during its existence. The 46 shareholders were identified by PBL who were having interest in the broadcasting business of company (*the company has provided details and the dates when the shares were transferred by PBL to 46 shareholders during 2012-13*). The shares were transferred and not allotted to 46 shareholders which is much below the threshold limit of 50 persons and hence the said transfers cannot be deemed to be as “Shares Offered for Sale to the Public”. Further, as the number of shareholders is much below the threshold the provisions of section 67(3) of the Companies Act, 1956, does not apply.
- 6.3.4. In the financial year 2013-14, 37,29,570 shares of the company were transferred to 37 existing shareholders (*from the list of 46 shareholders of F.Y.2012-13*) cannot be either deemed to be the “Shares offered for sale to the Public” or deemed to be an “Offer or Invitation to Public to Subscribe

Shares" in terms of the provisions of Companies Act, 1956. In the F.Y.2013-14 the company did not make transfer of shares to the new shareholders over and above the threshold limit of 49 persons within a period of six months after allotment of shares to PBL.

6.3.5. Further, the total number of shareholders in the F.Y. 2012-13 and F.Y.2013-14 is 101 i.e. 47 shareholders in 2012-13 and 54 shareholders in 2013-14 (*excluding 37 shareholders from the list of 2012-13*).

6.3.6. During the F.Y. 2013-14, ABL transferred 18,37,210 shares to 55 new shareholders which constitutes 2.64% of the total paid up capital of the company. The restriction on the maximum number of 49 persons is only for allotment of shares by the company in a preferential allotment and not for the transfer of shares by a company. The company has never during its existence issued or allotted any of its equity shares to 50 to more persons.

6.3.7. SEBI appears to have mistaken the total number of transfers with total number of transferees and consequently erred in calculating the total number of transferees / shareholders as 445 instead of 101. The company never had 445 shareholders at any point of time since its inception.

6.3.8. Thus, the company did not issue, allot or approve transfer of shares to 338 shareholders in the F.Y. 2012-13 or to 107 shareholders, in the F.Y. 2013-14 as alleged in the SCN.

6.3.9. Mr. Mulla Abdul Gafoor (Holding DIN: 05273753) promoter and director of ABL had tendered his resignation on 30.11.2013 from this directorship of ABL. After resignation, Mr. Mulla Abdul Gafoor was appointed as the Director of PBL on 30.03.2018 which evidently represents that he was not the Director of PBL during the transfer of shares and that ABL and PBL were not related parties and do not have common control between them.

6.3.10. Neither the provisions of Companies Act, 1956 nor any other act, rules and regulations restricts share transfers. Hence, the company cannot be constrained from taking decision of split and transfer shares.

6.3.11. Thus there is no violation of provisions of sections of Companies Act, 1956 or Regulations of SEBI (ICDR) Regulations, as referred in the SCN.

6.3.12. ABL, in reply to post hearing submission vide letter dated June 3, 2023, provided the following: (i) Copy of annual return for F.Y. 2012-13 and 2013-14 and register of members of ABL for the F.Y. 2013-14. (ii) copy of bank statement of PBL evidencing its procurement of loan (iv) reply to the allegation with regard to PBL raising funds from financial institution and investing the same in ABL and later disinvesting the same (v) reason for transfer of shares of ABL held by PBL to the trade unions.

6.3.13. ABL submitted that it has not violated any of the provisions of Companies Act, 1956 nor SEBI Act, or any rules or regulations made thereunder.

Submissions of PBL

6.3.14. PBL provided details of shares allotted by ABL (*details are in line with the Table-1 provided at para 4.1 above*).

6.3.15. In the F.Y. 2012-13 and 2013-14, PBL transferred the shares received from ABL to identified registered trade unions and other employee trade unions. Details are as under:

Table 3

F.Y.	Total Transferees	Total Transfers	Total No. of shares
2012-13	46	338	6,39,73,220
2013-14	*55	107	55,66,780
Total	101	445	6,95,40,000

** 55 transferees are new shareholders. As per PBL, the total no. of transferees in 2013-14 is 92 in which 37 are existing shareholders.*

- 6.3.16. PBL has submitted that transfer of 6,77,02,790 shares to 46 shareholders in 2012-13 and 55,66,780 shares to 92 shareholders (*which includes 37 existing shareholders and 55 new shareholders*) in 2013-14 will not be reckoned as “Shares Offered for Sale to the Public” or “Offer or Invitation to the Public to Subscribe Shares” in terms of section 64(2) and 67(3) of the Companies Act, 1956.
- 6.3.17. The transfer of 18,37,210 shares to 55 shareholders in 2013-14 did not take place within a period of 6 months from the date of allotment of shares by ABL hence the said transfers cannot be deemed to be the “Shares Offered for Sale to the public”. Moreover the restriction on the maximum number of 49 persons is only for allotment of shares by the company and not for the transfer of shares by a company. Therefore, the provisions of Section 64(2) and 67(3) of the Companies Act, 1956 are not applicable.
- 6.3.18. Mr. Abdul Gafoor was appointed as the Director of the Company for the first time on 30.03.2018 and at the time of his appointment he was not acting as the Director of ABL.
- 6.3.19. Except having shared business interests, PBL and ABL were not related and do not have common control between them.
- 6.3.20. The Board of Directors of ABL and PBL had similar business interests. However, there was a change in the project plan consequent to the difference of opinions which cause delay in the implementation of the project, PBL was required to repay the financial loan taken on 20.06.2012, from the State Bank of India (“SBI.”) PBL was left with no other option but to disinvest its shareholding in ABL. Accordingly, PBL sold its shares in ABL to the trade unions who were interested in the business of ABL and out of the proceeds of the disinvestment, PBL could repay and close the loan of SBI on 18.10.2012. This resulted in trade unions and associations becoming shareholders in ABL. (*PBL has provided a copy of certification dated June 3, 2023 from SBI regarding closure of its loan account*)

Consideration of Issues:

7. I have considered the SCNs, replies and other materials available on record. On perusal of the same, the following issues arise for consideration:

- A. Whether the allotment of 6,95,40,000 shares by ABL to PBL on 8 instances during the period June 20, 2012 to July 24, 2013 and the onward transfer of these shares by PBL to multiple entities thereafter, was an “offer for sale” in terms of the provisions of section 64(2) read with section 67(3) of the Companies Act, 1956 and the corresponding provisions of Companies Act, 2013?
- B. If the answer to issue A is in the affirmative, whether there was a violation of the provisions of Companies Act, 1956 and ICDR Regulations, 2009 read with the corresponding provisions of Companies Act, 2013 and ICDR Regulations, 2018?
- C. In consideration of the answers to issues A and B, what is the liability of each of the Noticees for such violations?
- D. In consideration of answers to issues A, B and C, what directions are required to be issued in respect of the Noticees?

8. Before I proceed to examine the above issues vis-à-vis the material available on record and the submissions made by the Noticees, it would be appropriate to refer to the provisions of law alleged to have been violated by the Noticees.

A gist of the provisions of ICDR Regulations, 2009 is as under:

Table 4

Regulation no. of ICDR Regulations, 2009	Provisions
Regulation 4(2)(d) and 4(2)(e)	To apply for listing of specified securities on one or more recognized stock exchanges and to enter into an agreement with depositories to issue securities in dematerialized mode
Regulation 5(1), 5(2), 5(5) and 5(7)	To appoint merchant banker and other intermediaries and enter into agreement with intermediaries as prescribed

Regulation 6(1)	To file draft offer document with SEBI and the designated stock exchange and ROC
Regulation 7	To obtain in-principal approval from the recognized stock exchanges on which the specified securities are to be listed
Regulation 26(1), 26(2) and 26(6)	To satisfy the conditions of initial public offer and offer for sale
Regulation 32(1)	To ensure minimum contribution by promoters
Regulation 36 and 37	To ensure lock-in of specified securities held by promoters and persons other than promoters
Regulation 46(1)	To keep the public issue open for the specified period
Regulation 47(1)	To issue pre issue advertisement for public issue
Regulation 49(1)	To ensure that the minimum application value is ₹10,000/- to ₹15,000/-
Regulation 57(1), 58(1) and 58(2)	To adhere to the manner of disclosures in the offer documents and abridged prospectus
Regulation 63	To appoint Compliance officer

- Sections 2(36) read with Section 60, 56(1), 56(3), 64(2), 67(3), 73(1) and 73(2) of the Companies Act, 1956 provide as under:

Section 2(36)

"prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate.

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. sign the prospectus depending on the circumstances of each case.

Section 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.

(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:

Section 64. Document Containing Offer Of Shares Or Debentures For Sale To Be Deemed prospectus

(2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown -

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot ; or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the shares or debentures had not been received by it.

Section 67. Construction Of References To Offering Shares Or Debentures To The Public, Etc.

(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).

Section 73 Allotment Of Shares And Debentures To Be Dealt In On Stock Exchange

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

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

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

(2) Where the permission has not been applied under sub-section (1), or, such permission having been applied for, has not been granted as aforesaid, the company shall forthwith repay without interest all moneys received from applicants in pursuance of the prospectus, and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(2A) Where permission has been granted by the recognised stock exchange or stock exchanges for dealing in any shares or debentures in such stock exchange or each such stock exchange and the moneys received from applicants for shares or debentures are in excess of the aggregate of the application moneys relating to the shares or debentures in respect of which allotments have been made, the company shall repay the moneys to the extent of such excess forthwith without interest and if such money is not repaid within eight days, from the day the company becomes liable to pay it, the company and every director of the company who is an officer in default shall, on and from the expiry of the eighth day, be jointly and severally liable to repay that money with interest at such rate, not less than four per cent and not more than fifteen per cent, as may be prescribed, having regard to the length of the period of delay in making the repayment of such money.

(2B) If default is made in complying with the provisions of sub-section (2A), the company and every officer of the company who is in default shall be punishable with fine which may extend to fifty thousand rupees, and where repayment is not made within six months from the expiry of the eighth day, also with imprisonment for a term which may extend to one year.

9. I now proceed to deal with the specific issues identified in paragraph 7, in light of the material on record and the submissions made by the Noticees.

Issue A: Whether the allotment of 6,95,40,000 shares by ABL to PBL on 8 instances during the period June 20, 2012 to July 24, 2013 and the onward

transfer of these shares by PBL to multiple entities thereafter, was an “offer for sale” in terms of the provisions of section 64(2) read with section 67(3) of the Companies Act, 1956 and the corresponding provisions of Companies Act, 2013?

10. It is an undisputed fact that the company, ABL had issued a total of 6,95,40,000 equity shares at a face value of ₹10/- per share, which were allotted to PBL on 8 occasions during the period June 20, 2012 to July 24, 2013 and raised an aggregate amount of ₹69,54,00,000/-. Subsequently, the shares allotted to PBL were transferred by it to multiple entities. The details of shares allotted by ABL to PBL and their subsequent transfers have been noted earlier in **Table 2**. On the basis of the accompanying factors such as the dates when allotments were made to PBL and the, decision to subsequently transfer the same to public and also the time period within which the shares were allotted and transferred to public (i.e. within 6 months in most instances), it is alleged in the SCN that ABL was well aware of the entire transactions and the allotment to PBL was only made with a premeditated view to transfer the shares to public. The said allegation has been levelled in view of the deeming provisions contained in section ‘64(2)’ and first proviso section ‘67(3)’ of the Companies Act, 1956. For reference, the relevant text of these provisions is reproduced as under:

64 (2) For the purposes of this Act, it shall, unless the contrary is proved, be evidence that an allotment of, or an agreement to allot, shares or debentures was made with a view to the shares or debentures being offered for sale to the public if it is shown -

(a) that an offer of the shares or debentures or of any of them for sale to the public was made within six months after the allotment or agreement to allot
;or

(b) that at the date when the offer was made, the whole consideration to be received by the company in respect of the shares or debentures had not been received by it.

67 (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.

11. Essentially, the allegation in the present case is that since the shares of ABL were allotted to PBL during FY 2012-13 and 2013-14 and the same were transferred by PBL onwards to more than 50 persons within a period of 6 months from the date of their allotment to PBL, the same has to be treated as an 'offer for sale' to public. Accordingly, the SCN alleges that the said offer for sale to public ought to have been done in accordance with the applicable provisions of the Companies Act, 1956 and the ICDR Regulations, 2009, which were in existence at the relevant point of time.

12. In the backdrop of the above allegations levelled in the SCN, in my view, the issue that needs to be addressed is whether, in the facts and circumstances of the case, ABL, PBL and other Noticees have been able to prove that the allotment of shares by ABL to PBL was not made with a view to the shares being offered for sale to the public.

13. In this context, it is noted that there is nothing on record to show that during the period when the allotments were made by ABL to PBL (i.e., during FY 2012-13 and 2013-14), the two companies involved in the matter i.e., ABL and PBL had common promoter, common director or any other pre-existing connection, or that either of the companies controlled the other. The common link brought out in the SCN i.e.,

Mr. Mulla Abdul Gafoor (promoter and director of ABL) resigned from ABL on November 30, 2013 from this directorship and after a period of around 4.5 years from resignation from ABL, he was appointed as a director of PBL on March 30, 2018.

14. It has been submitted on behalf of PBL that the two companies (ABL and PBL) had come together as their Board of Directors had similar business interests (broadcasting and production of informative programs). Pursuant thereto, PBL had agreed to subscribe to the shares of ABL and for that purpose it had also taken a financial loan from State Bank of India for an amount ₹18,00,00,000/- on June 14, 2012 for payment towards the total allotment of 6,95,40,000 shares. However, subsequently, differences of opinion arose between them which caused delay in the implementation of the project and PBL was required to repay the financial loan taken from SBI. As submitted by PBL, it was left with no other option but to disinvest its shareholding in ABL and it sold its shares in ABL to the trade unions who were interested in the business of ABL and out of the proceeds of such disinvestment, PBL could repay and close the loan of SBI on October 18, 2012. It is these trade unions and associations who were the transferees of the share transfers by PBL. It was submitted during the personal hearing as a matter of fact that majority of these transferees are still holding the shares of ABL.

15. From the above observations and submissions, it emerges that ABL and PBL had similar commercial interests and in furtherance thereof, the allotment of shares was made by ABL to PBL. In respect of the allotment of shares to PBL (i.e., on 8 instances), ABL received the entire consideration towards the shares at the time of allotment itself. PBL raised a loan from SBI for the purpose of subscribing to shares of ABL and subsequently repaid it by selling the shares of ABL to multiple entities. In absence of commonality of control or any pre-existing connection in the form of common promoter, director, shareholding, etc., it is difficult to deduce that the entire process of allotment of shares by ABL to PBL and the onward transfer of shares by PBL to various transferees during FY 2012-13 and 2013-14, was designed as a scheme for raising funds from public by making an offer for sale to public.

16. Further, in relation to the minutes of the Board Meetings in which the allotments were approved by ABL, I note that there is no dispute as to the fact that ABL was a public company and since its shares were freely transferable, the constitution of a share transfer committee for the purpose of subsequent transfer of shares by the allottee (PBL in the present case) cannot, in itself, be considered as an indicator of the intent of ABL to make an offer for sale to public.

17. In view of the foregoing findings and the assessment of the provisions of section 64(2) and 67(3) of the Companies Act, 1956, in light of the facts and circumstances discussed above, I am inclined to conclude that the allotments of shares by ABL to PBL during the FY 2012-13 and 2013-14 were not done with a view to offer these shares for sale to public. Therefore, the deeming provisions under section 64(2) and 67(3) of the Companies Act, 1956 are not attracted in the present case and accordingly, issue A is answered in the negative.

B. If the answer to issue A is in the affirmative, whether there was a violation of the provisions of Companies Act, 1956 and ICDR Regulations, 2009 read with the corresponding provisions of Companies Act, 2013 and ICDR Regulations, 2018?

C. In consideration of the answers to issues A and B, what is the liability of each of the Noticees for such violations?

D. In consideration of answers to issues A, B and C, what directions are required to be issued in respect of the Noticees?

18. Having answered issue A in the negative and considering that the determination of issues B, C and D is dependent on an affirmative answer to issue A, I find that it would not be necessary to delve into issues B, C and D.

19. In view of what has been discussed hereinabove, I find that the violations alleged against the Noticees have not been established in the facts and circumstances of the present case, and therefore, issuance of any directions against the Noticees is not warranted.

Order:

20. In view of the aforesaid observations and findings, I, in exercise of the powers conferred upon me under sections 11(1), 11(4), 11A and 11B read with section 19 of the SEBI Act, hereby dispose of the show cause notice dated January 18, 2023 issued to the Noticees without issuing any directions.

21. A copy of this order shall be served on the Noticees. Further, a copy of the order shall also be sent to the Stock Exchanges and Depositories for their information.

Sd/-

Place: Mumbai

Date: September 07, 2023

**MANOJ KUMAR
EXECUTIVE DIRECTOR
SECURITIES AND EXCHANGE BOARD OF INDIA**