**WTM/MPB/EFD-1-DRA-IV/189/2021**

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER**

**FINAL ORDER**

**Under Sections 11, 11(4), 11A and 11B (1) of the Securities and Exchange Board of India Act, 1992**

**In the matter of Aakruti Nirmiti Limited**

**In re Deemed Public Issue Norms**

**In respect of:**

| Noticee No. | Name of Noticee | PAN / Address |
|---|---|---|
| **Noticee no. 1** | Aakruti Nirmiti Limited | AAGCA3529F |
| **Noticee no. 2** | Manilal V Patel (HUF) | AADHM1455N |
| **Noticee no. 3** | Vithal S Patel (HUF) | AAEHP1689J |
| **Noticee no. 4** | Mahesh N Patel (HUF) | AAHHM2207A |
| **Noticee no. 5** | Vinesh S Patel (HUF) | AAEHP3453J |
| **Noticee no. 6** | Shantilal K Patel (HUF) | AANHS7653G |
| **Noticee no. 7** | Hiralal Rangani (HUF) | 6, Dev Enclave, Behind VK High School, Line-Ali, Shivaji Road, Panvel, Raigad - 410206 |
| **Noticee no. 8** | Aakruti Concepts Pvt Ltd | AAECA8576E |
| **Noticee no. 9** | Shri Vishvadeep Harilal Patel | APUPP6789G |
| **Noticee no. 10** | Smt. Rekha Mahesh Patel | ARVPP6965H |
| **Noticee no. 11** | Smt. Neeta Shantilal Patel | AHFPP2195K |
| **Noticee no. 12** | Smt. Madhu Manilal Patel | AAFPP8203P |
| **Noticee no. 13** | Smt. Ramila Vinesh Patel | AAMPP0580E |
| **Noticee no. 14** | Smt. Rachna Vithal Patel | AABPP7846E |
| **Noticee no. 15** | Shri Dharmishth Harilal Patel | AMCPP6187D |

| | | |
|---|---|---|
| **Noticee no. 16** | Shri Sunil Naik | AAHPN7603D |
| **Noticee no. 17** | Shri Shailendra Jhallawar | ACCPJ5105E |
| **Noticee no. 18** | Shri Anita Pirgal | AARPP4011H |
| **Noticee no. 19** | Shri Manilal V Patel | AABPP0422C |
| **Noticee no. 20** | Shri Vithal S Patel | AABPP0399Q |

***Background***

1. Aakruti Nirmiti Limited (hereinafter referred to as "**Aakruti**"/ "**Company**") was incorporated on May 8, 2006 as Aakruti Nimriti Pvt. Ltd. and was converted to an unlisted public company on June 25, 2007. The company is registered with Registrar of Companies – Mumbai with CIN: U70100MH2006PLC161675. Its registered office is at "*002-CHANAKYA, OPP. T-WARD OFFICE, DEVI DAYAL ROAD, MULUND WEST, MUMBAI - 400080*".

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an examination into the fund raising activity alleged against Aakruti in respect of public issue of equity shares and undertook an enquiry to ascertain whether Aakruti had made any public issue of equity securities without complying with the provisions of the Companies Act, 1956, Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and the Rules and Regulations framed thereunder including SEBI (Disclosure and Investor Protection) Guidelines, 2000 (hereinafter referred to as "**DIP Guidelines**") 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 common Show Cause Notice (hereinafter referred to as "**SCN**") dated October 16, 2018 was sent to Noticee Nos. 1 to 18 in the extant matter to show cause as to why suitable actions/directions in terms of Sections 11 (1), 11(4), 11A and 11B of the SEBI Act should not be initiated against them for the alleged violation of the provisions of Sections 56(1), 56(3), 60, 73 read with Section 67 of the Companies Act, 1956 and Clauses 2.1.1, 2.1.4, 2.2,

4.11, 4.14, 5.3.1, 5.4.1, 5.6.2, 8.8.1, 5.6A and 6.0 to 6.15 of DIP Guidelines, by all the Noticees

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

   4.1. On enquiry by SEBI, it was observed that Aakruti had made a public offer of equity shares, on seven instances during the period April 17, 2007 to December 15, 2007, in the financial year 2007-08 (hereinafter referred to as *"Offer of Equity Shares"*) and raised an aggregate amount of Rs. 29,83,68,170/- from 284 allottees. The number of allottees and funds mobilised has been collated from Form 2 (return of allotment) submitted by the company.

   4.2. It is observed from the reply dated February 23, 2018 of the company that during the 2007-08, Noticee Nos. 2 to 7 were the Promoter-Directors of the company, Noticee Nos. 8 to 15 were the Promoters of the company and Noticee Nos. 16 to 18 were the Directors of the company.

   4.3. In view of the above, it is alleged that, the company made allotment of equity shares to a total of 284 persons on 7 instances from April 17, 2007 to December 15, 2007, hence, there was an obligation to file prospectus in connection with the issue of securities and comply with the relevant provisions of Companies Act, 1956 and DIP Guidelines.

   4.4. Noticee Nos. 2 to 18 were the Promoters and Directors of Noticee No. 1, as the case may be during the relevant period, and as such were responsible for the affairs of the Noticee No. 1. It is therefore, alleged that they have also violated the relevant provisions of Companies Act, 1956 and DIP Guidelines along with the company.

5. Based on the above, the Noticees were advised to show cause as to why suitable actions/directions in terms of Sections 11(1), 11(4), 11A and 11B of SEBI Act should not be initiated against them for the alleged violation of the provisions of Companies Act, 1956 and DIP Guidelines.

***Reply and Hearing***

6. Company, post receipt of the SCN, vide its letter dated November 2, 2018 requested

for additional time to submit a reply to the SCN. Company vide its letter dated December 3, 2018 *inter alia* submitted as follows on behalf of Noticee No. 1 to 17:

6.1. The company's current authorised capital is Rs. 35,00,00,000 divided into 3,50,00,000 equity shares of Rs. 10 each and the paid-up capital of the company is Rs. 28,37,83,170.

6.2. Noticee Nos. 2 to 7 being Hindu Undivided Family(s) (HUFs) are promoters of the company and not the Directors of the company. However, the Kartas of the said HUFs are the Promoter – Directors of the company. Further, Noticee No. 17 was not at all concerned with financial transaction and matters of the company.

6.3. Section 67(3) of Companies Act, 1956 puts a restriction on the number of persons to whom the shares shall be allotted under single offer or invitation by providing that no offer or invitation of shares and debentures shall be made which will result whether directly or indirectly in such shares or debentures being made available for purchase or subscription to 50 persons or more at a time.

6.4. There was no public circulation of the application forms / private placement offer letter.

6.5. Private Placement(s) made by the company during the year 2007 shall not be regarded as the public offer by way of deeming fiction under the first proviso to Section 67(3). As there was no invitation / offer by the company to more than 50 persons on any of such occasion(s), Section 67 is not at all attracted. The allotment of equity shares of the company on private placement basis was made to the members of Patel community and all the allottees in the above mentioned allotment were the family members' / family friends / friends of existing shareholders and Promoters of the company.

7. An opportunity of hearing was granted to Noticees No. 1 to 18 on April 23, 2019 vide hearing notice dated April 1, 2019. Hearing notices were served on Noticee No. 1 to 17 while for Noticee No. 18, a public notice was issued.

8. On the day of scheduled hearing, Authorized Representatives (hereinafter referred

to as **"ARs"**) on behalf of the company and Mr. Sunil Naik ex-director and Noticee No.16 in the matter appeared for hearing and made *inter alia* the following submissions:

8.1. That the company issued equity shares in the year 2007-2008 in 7 tranches and no single allotment exceeded more than 49.

8.2. That they misread the law as each allotment is required to be less than 50 as the law was not specifically stated about the said limit within a financial year.

8.3. The complainant is not their shareholder and the company does not have any refund liability towards him.

8.4. The brochure submitted by the complainant does not pertain to the company but related to an investment meet conducted by its group company. In this regard, the company was advised to submit the details/evidence regarding the brochure

8.5. That the shares were not issued as per the brochure, it was issued to Patel community. In this regard, the ARs were advised to submit the details of offer letter, list of shareholders with address and their relation with the Noticees, etc.

8.6. The Noticees stated that the investors may be granted exit option as per the Circular of 2015 mentioned in the SCN.

9. Mr. Sunil Naik (Noticee No. 16) submitted the following:

9.1. He is a chartered accountant by profession.

9.2. He was appointed as an Independent Director of the company and resigned after sometime. The Noticee was advised to submit the MCA records for the same.

9.3. He has attended some Board Meetings but did not take any remuneration from the company.

9.4. He knows Mr. Vittal Patel, M.D. of the company and his full time Company Secretary who used to guide them and manage the affairs of the company.

9.5. That Noticee No. 17 is also an Independent Director of the company and an advocate by profession.

10. The ARs of the Company were directed to submit the following:

10.1. RoC filings with respect to the appointment of Mr. Vittal Patel as Managing Director of the company;

10.2. Copy of Annual Report during the relevant period

10.3. Details of all the Directors during the relevant period;

10.4. Latest Annual Report and present book value of the shares of the Company.

10.5. Details as to whether shares are fully paid up or not and total amount of money they paid with breakup as to before the issuance and after the issuance of shares.

11. ARs were granted time up to May 15, 2019 to file additional written submissions along with the details sought.

12. No one appeared for the remaining Noticees viz., Aakruti Concepts Pvt. Ltd., Shri Manilal V.Patel, Vittak S. Patel (HUF), Mahesh N Patel (HUF), Vinesh N. Patel (HUF), Shantilal K Patel (HUF), Smt. Rekha Mahesh Patel, Smt. Neeta Shantilal Patel, Smt. Madhu Manilal Patel, Smt. Ramila Vinesh Patel, Smt. Rachana Vithal Patel and Shri Shailendra Jhallawar.

13. Post hearing, company vide its letter dated June 18, 2019 while reiterating its earlier submissions, *inter alia* submitted as follows:

13.1. Upon conversion of the company from private to public (unlisted), the company decided to raise additional capital from close relatives, friends and persons related to community of Promoters of company and for the said purpose, it circulated offer letters to various persons for raising of capital. In total, 7 different offers were made through 7 private placement offer letters, circulated to not more than 49 persons at a time (in compliance with the applicable regulatory regime).

13.2. Accordingly, the company issued and allotted total 2,98,36,817 equity shares of Rs. 10/- each on 7 instances to 284 persons (ranging from 12-47 on each instance) who were close relatives, friends and persons related to community of Promoters of company during the period April 17, 2007 to December 15, 2007 on a private placement basis. Details of the allotment made by the company is mentioned in the table below:

| **Sl. No.** | **Date of Allotment** | **No. of Allottees** | **Total Shares Allotted** | **Nominal Value of Shares (Rs.)** |
|---|---|---|---|---|
| 1 | 17/4/2007 | 43 | 24,24,000 | 2,42,40,000 |
| 2 | 18/5/2007 | 45 | 29,21,002 | 2,99,10,020 |
| 3 | 25/5/2007 | 46 | 28,25,000 | 2,82,50,000 |
| 4 | 31/5/2007 | 47 | 35,50,000 | 3,55,00,000 |
| 5 | 26/6/2007 | 45 | 31,25,000 | 3,12,50,000 |
| 6 | 18/9/2007 | 46 | 32,31,815 | 3,23,18,150 |
| 7 | 15/12/2007 | 12 | 1,16,90,000 | 11,69,00,000 |
| **Total** | | **284** | **2,98,36,817** | **29,83,68,170** |

13.3. The company issued shares on a private placement basis. There was no public circulation of the application forms / private placement offer letter.

13.4. The company made 7 different offers on various instances to 7 different sets of people. Each of these offers / invitations to offer were made through separate offer letters, aiming at generating capital for different business plans.

13.5. Each of the application was individually addressed to a specific applicant without having an option to the applicant to make the application form available to the third parties.

13.6. Compared to the provisions of Companies Act, 2013, Companies Act, 1956 provided for a limitation “per issuance”. Companies Act, 1956 neither restricts the number of offers in one financial year nor does it restrict the

cumulative number of offers / invitation to offer in one financial year.

14. The company vide its letters dated September 5 and 6, 2019 submitted the following:

    14.1. Details of its Chairman and Managing Director

    14.2. Copy of Minutes and Resolution of EOGM held on April 1, 2007.

    14.3. Annual Report of company for FY 2007-08.

    14.4. Form- 32

***Supplementary Show Cause Notice and Second SCN***

15. A supplementary show cause notice dated December 19, 2019 was issued to Noticees No. 1 to 18 wherein it was stated as follows:

    15.1. Para 10(a) of SCN may be read as follows:

    (a) *directions against Noticee No. 1 to 18 for refund of all subscription money in terms of Section 73 of the Companies Act, 1956.*

16. A second common SCN dated December 20, 2019 was issued to Noticee Nos. 19 and 20 in the matter wherein apart from reiterating the facts and allegations as stated in SCN dated October 16, 2018, following was alleged:

    16.1. Noticee Nos. 2 to 18 were the Promoters and Directors of Noticee No. 1, Noticee No. 19 was the Chairman & Managing Director and Noticee No. 20 was the Joint Managing Director of Noticee No. 1 during the relevant period and as such were responsible for the affairs of the Noticee No. 1.

17. The aforesaid supplementary SCN and second SCN was served on all the Noticees named therein via post, hand delivery and affixture. In response to the aforesaid Notices, the company vide its letter dated January 13, 2020 again submitted its reply dated June 18, 2019

18. Considering the facts and circumstances of the case, another hearing opportunity was granted to the Noticees Nos. 1, 7, 9, 15, 18, 19 and 20 on July 28, 2020. Service of the hearing notice was done through email and newspaper publication. In

response to the same Noticee Nos. 1, 19 and 20 requested to adjourn the hearing due to unavoidable situations. Subsequently, hearing opportunity was granted to Noticees No. 1 to 6, 8, 10 to 14, 16, 17, 19 and 20, on August 25, 2020. Service of the hearing notice was done through email, courier and newspaper publication. The hearing scheduled on August 25, 2020 could not be conducted on health grounds of Noticees No. 19 and 20. Consequently, Noticees were granted hearing opportunity on September 17, 2020 which also was not availed by the Noticees as the AR of the Noticees was unavailable for personal reasons. A final opportunity of hearing was granted to the Noticees on December 2, 2020.

19. On the day of scheduled hearing, ARs appeared for and on behalf of all the Noticees while Noticees No. 19 and 20 also appeared in person. The ARs submitted as follows:

19.1. That the company issued equity shares in the year 2007-2008 in 7 tranches.

19.2. The Promoters of the company belong to the Kutchi Patel community and they had approached some individuals belonging to their community to raise funds. The offer to subscribe to shares of the company was made only to 41 persons. Those 41 persons expressed interest to invest in the company on behalf of their family members. The offer letter that was sent to these 41 individuals specified that the issuance was on a private placement basis.

19.3. There was no public notice, advertisements or any other form of marketing for any of the issuances. No fees/brokerage were paid to any party for procuring any allotment.

19.4. That the number of allottees stated in the SCN is incorrect. The allotment at the relevant time was made to 278 allottees and not to 284 allottees. There were six individuals who had transferred their shares whose details have been included in the number of 284 allottees.

19.5. That the company invested its funds of Rs. 30.83 crores (including the Rs. 28 crores from the issuances) in two real-estate projects in Bangalore.

19.6. That during this pandemic, liquidating the assets for the purpose of refund if any will be difficult as the entire real-estate industry is looming under the negative impact of the lock-down. Such direction at this stage will put further financial strain on the cash flow of the company leading it to its insolvency and will prejudice the interests of shareholders.

19.7. The Noticees viz., Shri Vishwadeep Patel, Ms. Neeta Shantilal Patel, Ms. Rekha Mahesh Patel, Ms. Madhu Manilal Patel, Ms. Ramila Vinesh Patel, Ms. Rachana Vithal Patel and Ms. Dharmistha Patel are family members and relatives of the Promoters and have no role to play in the issuance. None of these Noticees have attended any Board Meeting or participated in any manner in the issuances. Further, Noticee Nos. 16, 17 and 18 viz., Shri Shailendra Jhallawar, Shri Sunil Naik and Ms. Anita Pirgal are Professional Directors who have no role to play in the overall working of the company and were *bona fide* third parties with no interest other than professional fees.

19.8. The Noticees were granted time upto December 17, 2020 to file written submissions.

20. The company on behalf of all the Noticees and in response to all the SCNs including supplementary SCN, vide its letter dated December 17, 2020 submitted as follows:

20.1. The SCN alleges that because *allotment* was made to 284 parties, there were obligations in relation to public issue required to be complied with by the company and its Promoters / Directors. However, it is apparent from Section 67 (3) of Companies Act, 1956 that the relevant aspect is the manner in which *invitation / offer* is made and the number of people to whom the invitation / offer is made.

20.2. It is submitted that the number of allottees stated in the SCNs is incorrect. The allotment at the relevant time was made to 278 allottees and not to 284 allottees. There were six individuals who had transferred their shares whose details have been included in the number of 284 allottees. The number of allottees is therefore 278 and not 284.

20.3. Out of the 278 individuals to whom shares were allotted, 64 individuals were related to the Promoters/Directors of company. There was no specific offer made to these individuals and they have, on account of their relations with the Director/Promoters have invested in the shares of the company.

20.4. The offer to subscribe to shares of company was made to 41 specific individuals. It was these 41 individuals that subscribed to the shares of company in their own names and in the names of their family members or close associates.

20.5. The company confirms that apart from 41 specific individuals, no invitation or offer was made to another party.

20.6. It was only at the unilateral instance of these 41 individuals that shares were issued to their family members and associates. The investment discussions were generally undertaken by one of the family members although the investment were made by family members individually depending on the availability of funds, tax and other fiscal considerations.

20.7. The company did not consider the family members and associates of these 41 individuals to be outsiders or public as they were closely associated with the 41 individuals to whom the offer was made.

20.8. The facts of the present case are distinct from those in Sahara's Case where the offer was made to 3 crore people and was subscribed to by 66 lakh individuals. The present case does not warrant the same approach.

20.9. The focal point of Section 67(3) of Companies Act, 1956 is on "offer and invitation made" and not on "subscription". Considering, the offer was made only to a selected group of 41 persons mentioned above, the question of any violation as alleged does not arise.

20.10. Further while computing the total number of offer made, there are certain class of person who come within the criteria of exempted persons and therefore an offer made to such person cannot be included in the total offers

made. The exempted categories include offer made to promoters, directors, existing members and their respective relatives.

20.11. Without prejudice to other submissions, it is submitted that the shareholding of various public investors in the company has reduced from 278 to 196 presently. The Companies Act, 2013 read with the Companies (Prospectus and Allotment of Securities) Rules, 2014 allow issuance of shares upto 200 persons in a financial year. The number of such allottees being less than the present number allowed by law, a reasonable view may be taken and no direction or adverse order may be issued against ANL and the other Noticees.

20.12. Out of total paid up capital of Rs. 28.43 crores as on March 31, 2008, the Promoters and Promoters' family members' contribution was more than 38% (Rs. 11 crore). This means that the management and promoters of the company are themselves invested in the working and enhancement of the financial position of the company. The Promoters have themselves, between 2007 and 2015, purchased about 10% shareholding of approximately 10% (2.9 lakh shares), in their personal capacity where the shareholders wanted an exit.

20.13. It is submitted therefore that the funds invested by the shareholders are presently backed by assets showing in the books of the company. It is submitted therefore that when the interest of the shareholders is protected, there is no reason for any direction to refund any monies to them.

20.14. In addition to the investment made in the ongoing projects, an outstanding debt to the tune of Rs. 39 crore extended by ANL to M/s Innovative Film City Private Limited, is not readily available as Corporate Insolvency Resolution Process have been activated against the debtor.

20.15. Any direction of refund to these 196 shareholders would be no less than writing the saga of dissolution of the company and the company will need to liquidate its assets to repay the amount (despite there being no demand from the shareholders). Such a direction will mean that the assets will need to be sold as distress not fetching their correct value. The company may then not

even be in a position to repay the entire amounts.

20.16. On account of the sluggish real estate market and the damage due to the ongoing pandemic, it will not be possible for companies such as Aakruti to be able to raise liquidity in the immediate future. Therefore, to saddle the company with the obligation to repay the shareholders at this juncture will necessarily mean that the company, which otherwise has prospects and has been sustaining growth will be seriously prejudiced.

20.17. Noticee Nos. 9 to 15 are family members and relatives of the Promoters and have no role to play in the issuance. None of these Noticees have attended any Board Meeting or participated in any manner in the issuances.

20.18. Noticee Nos. 16, 17 and 18 are Professional Directors who have no role to play in the overall working of the company and were bona fide third parties with no interest other than professional fees. It is submitted that there is no reason for any direction against these parties.

***Consideration of Issues and Findings***

21. I have considered the SCNs, replies, oral submissions and other materials available on record. On perusal of the same, the following issues arise for consideration. Each issue is dealt with separately under different headings.

*21.1. Issue No. 1 - Whether the company had allotted equity shares on 7 instances to 284 persons in aggregate during the period April 17, 2007 to December 15, 2007, as alleged in the SCN?*

*21.2. Issue No. 2 - If so, whether the said offer / allotment of shares was in violation of Sections 56, 60 and 73 of Companies Act, 1956 and provisions of DIP Guidelines?*

21.3. *Issue No. 3 - If the findings on Issue No. 2 are found in the affirmative, who are liable for the violations committed?*

***Issue No. 1- Whether the company had allotted equity shares on 7 instances to 284 persons in aggregate during the period April 17, 2007 to December 15, 2007, as***

***alleged in the SCN?***

22. I have perused Form 2 (Return of allotment) submitted by the company and minutes of the Board Meeting where the agenda of allotment of shares was discussed by the Board of Directors. I note that neither the company nor the Promoters and Directors have disputed the fact of issuance of equity shares by the company on seven instances during the financial year 2007-2008. With respect to the issuance of equity shares by the company, from FORM 2 (Return of allotment), it is noted that company had issued equity shares, which are as under:

| Sr. No. | Date of Allotment | No. of Allottees | Total Shares Allotted | Nominal Value of allotment (in Rs.) |
|---|---|---|---|---|
| 1 | 17/04/2007 | 43 | 24,24,000 | 2,52,40,000 |
| 2 | 18/05/2007 | 45 | 29,91,002 | 2,99,10,020 |
| 3 | 25/05/2007 | 46 | 28,25,000 | 2,82,50,000 |
| 4 | 31/05/2007 | 47 | 25,50,000 | 2,55,00,000 |
| 5 | 26/06/2007 | 45 | 31,25,000 | 3,12,50,000 |
| 6 | 18/09/2007 | 46 | 32,31,815 | 3,23,18,150 |
| 7 | 15/12/2007 | 12 | 1,16,90,000 | 11,69,00,000 |
| | **Total** | **284** | **2,98,36,817** | **29,83,68,170** |

23. From the above, I note that company had issued equity shares and had mobilised funds to the tune of Rs. 29.83 crore from 284 allottees during the Financial Year 2007-2008. Thus, I am of the view that the company had issued and allotted equity shares in the financial year 2007-08.

24. The company has submitted that allotment at the relevant time was made to 278 allottees and not to 284 allottees. There were six individuals who had transferred their shares whose details have been included in the number of 284 allottees. In this regard, I have perused Form 2 submitted by the company which has list of allottees annexed to it. The name of the five individuals out of six, the exception being Mr. Vithal Shamji Patel, do not appear in the list of allottees. Further, the company has not submitted any documentary evidence to substantiate its claim that shares were transferred by the five individuals, who as per available records,

are not part of the Promoter Group viz, when were the shares allotted to them, when and to whom, they have transferred the shares etc. Moreover, the name of the sixth individual namely Mr. Vithal Shamji Patel, does appear in the list of allottees of company. Thus, the submission of the company that the list of allottees as submitted by the company includes the name of six transferors, is not acceptable. It is also noted that even if the submission of the company is taken on record, I note that once the company has made offer / allotment of shares to more than 49 persons, for the purpose of determination whether the said offer / allotment of shares by the company falls within the ambit of Section 67 of the Companies Act, 1956, transfer of shares by the allottees, once the offer has been accepted by the allottees, is not a relevant criteria prescribed under the law.

25. I, therefore, conclude that the company had allotted equity shares to 284 persons during the period April 17, 2007 to December 15, 2007 as outlined above.

***<u>Issue No. 2</u>- If so, whether the said offer / allotment of shares was in violation of Sections 56, 60 and 73 of Companies Act, 1956 and provisions of DIP Guidelines?***

26. The provisions alleged to have been violated and mentioned in Issue No. 2 are applicable to the *offer / allotment of equity shares* made to the public. Therefore, the primary question that arises for consideration is whether the allotment of equity shares as outlined under Issue No. 1 is a 'public issue'. At this juncture, reference may be made to Sections 67(1), 67 (2) and 67(3) of the Companies Act, 1956:

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

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

*of the public, whether selected as members or debenture holders of the company concerned or as clients of the person issuing the prospectus or in any other manner.*

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

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

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

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

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

27. On perusal of Section 67(1) of the Companies Act, 1956, I note that the said Section provides for a rule of construction on offer / allotment of shares and debenture to the public. The said provision further subjects the rule of construction to the provisions *of sub-sections (3) and (4)* of 67 of the Companies Act, 1956. Therefore, the test for determining whether an offer / allotment of shares is made to public by applying the rule of construction in Section 67(1) of the Companies Act, 1956 needs to be read together with Sections 67(3) and 67(4) of the Companies Act, 1956. There is no case that Section 67(4) of the Companies Act, 1956 is applicable in the instant case which permits invitation to the members and debenture holders as per Section 67(4) of the Companies Act, 1956. Therefore, the rule of construction under Section 67(1) of the Companies Act, 1956 needs to be read together with Section 67(3) of the Companies Act, 1956. If so, read together, the consequence of such interpretation was succinctly phrased by the Hon'ble Supreme Court of India in

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

*"Section 67(1) deals with the offer of shares and debentures to the public and Section 67(2) deals with invitation to the public to subscribe for shares and debentures and how those expressions are to be understood, when reference is made to the Act or in the articles of a company. The emphasis in Section 67(1) and (2) is on the "section of the public". Section 67(3) states that no offer or invitation shall be treated as made to the public, by virtue of subsections (1) and (2), that is to any section of the public, if the offer or invitation is not being calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation or otherwise as being a domestic concern of the persons making and receiving the offer or invitations. Section 67(3) is, therefore, an exception to Sections 67(1) and (2). If the circumstances mentioned in clauses (1) and (b) of Section 67(3) are satisfied, then the offer/invitation would not be treated as being made to the public.*

*The first proviso to Section 67(3) was inserted by the Companies (Amendment) Act, 2000 w.e.f. 13.12.2000, which clearly indicates, nothing contained in Sub-section (3) of Section 67 shall apply in a case where the offer or invitation to subscribe for shares or debentures is made to fifty persons or more. ... Resultantly, after 13.12.2000, any offer of securities by a public company to fifty persons or more will be treated as a public issue under the Companies Act, even if it is of domestic concern or it is proved that the shares or debentures are not available for subscription or purchase by persons other than those receiving the offer or invitation.*

*...*

*The above discussion clearly indicates that from the years 1988 to 2000, private placement of preferential allotment could be made to fifty or more persons if the requirements of Clauses (a) and (b) of Section 67(3) are satisfied.*

***However, after the amendment to the Companies Act, 1956 on 13.12.2000, every private placement made to fifty or more persons becomes an offer intended for the public and attracts the listing requirements under Section 73(1). Even those issues which satisfy Sections 67(3)(a) and (b) would be treated as an issue to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1),*** *an application for listing becomes mandatory and a legal requirement. Reading of the proviso to Section 67(3) and Section 73(1) conjointly indicates that any public company which intends to issue shares or debentures to fifty persons or more is legally obliged to make an application for listing its securities on a recognized stock exchange."*

28. Section 67(3) of Companies Act, 1956 provides for situations when an offer/ allotment of shares is not considered as an offer to public. As per the said sub section, if the offer/ allotment of shares is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer / allotment of shares is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. It is noted that as per the *first proviso* to Section 67(3) Companies Act, 1956, the public offer and listing requirements contained in that Act would become automatically applicable to a company making the offer / allotment to fifty or more persons. The *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

29. The company vide its reply dated June 18, 2019 has submitted that 7 different offers were made through 7 private placement offer letters, circulated to not more than 49 persons at a time. The company has also submitted vide its letter dated December 17, 2020 that it has made one offer to 41 individuals. Thus, the submissions of the company with respect to offer(s) made by it, are contradicting each other and therefore, the submission made by the company later point in time,

is taken as the stated position of the company.

30. Without prejudice to the above, I note that from the list of the allottees that on a cursory reading the name of the allottees that they belong to Kutchi Patel community, as submitted by the company. Further, there is no evidence on record to show that there was any public notice or advertisement for the offer / allotment of shares by the company. However, with respect to the submission of the company that it had made 7 different offers through 7 private placement offer letters is examined, even if the aforesaid facts as brought above is taken into account, it is observed that the company has not despite an opportunity to do so, submitted any proof / evidence to demonstrate that it had circulated the offer to specific individuals, as claimed by it and that only they received the offer and no one else apart from them have received the offer. The material on record submitted by the Noticees do not substantiate that it had circulated the offer to specific individuals. Therefore, on this ground itself, the submission of the company that it had made 7 different offers, is unacceptable. Further, the company has not submitted an office copy of the offer letter which was specifically addressed to the individual to whom the company has allotted shares. The copy of offer letter submitted by the company lacks material particulars like name and address of the intended individual / entity, distinctive number of the offer letter etc. Moreover, the company has also not submitted dispatch details of the offer letter viz., date of dispatch, mode of service, proof of service, number of application forms received etc.

31. I, also note that the company was making the allotment at frequent interval during the period April 2007 to June 2007, five times in three months out of which three allotments were in the month of May, 2007. The frequency with which the allotments were made when seen along with the minutes of the Board of Directors meeting held on March 1, 2007 shows that the Directors of the company apart from being aware and having the knowledge that as a private limited company (prior to its conversion to public company) it can have only 50 shareholders, also leads credence to the fact that the company had made only one offer / allotment of equity shares albeit it was done in tranches where the number of allottees were

below 50 persons / entities.

32. In view of the aforesaid discussion, it is held that the company has not established that it had made multiple offers during the financial year 2007-08.

33. Company has submitted that it has made offer only to 41 specific individuals. In order to demonstrate the same it has stated that out of the 278 individuals to whom shares were allotted, 64 individuals were related to the Promoters / Directors of the company. Out of the remaining 173 individuals, offer to subscribe to shares of company was made to 41 specific individuals. It was these 41 individuals that subscribed to the shares of company in their own names and in the names of their family members or close associates. The company has placed reliance on the Sahara case and has submitted that while computing the total number of offers made, there are certain class of person who come within the criteria of exempted persons and therefore an offer made to such person cannot be included in the total offers made. The exempted categories as submitted by them include offer made to Promoters, Directors, existing members and their respective relatives.

34. In order to address the submissions of the company, following sub-issues needs to be addressed:

    34.1. Whether the offer of equity shares made by the company resulted in or 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?

    34.2. Whether the offer / allotment of equity shares made by the company is a domestic concern between the company and persons receiving the offer?

    34.3. Whether the offer to subscribe to the equity shares was made by the company to fifty persons or more?

35. With respect to the first sub-issue, I note that the company has submitted that it has made the offer to only 41 individuals and that it is these 41 individuals that subscribed to the shares of company in their own names and in the names of their family members or close associates. In this regard, the submission of the company

that it has made offer / allotment of equity shares only to individuals belonging to Kutchi Patel community is noted. However, I note that the company has not factually proved that the offer / allotment of equity shares was made to 41 individuals only. As noted in preceding paragraphs that company has not submitted office copies of the offer letter which was specifically addressed to the 41 individuals to whom the company is claiming to have made an offer of equity shares. The copy of offer letter submitted by the company lacks material particulars like name and address of the intended individual / entity, distinctive number of the offer letter etc. Moreover, the company has also not submitted dispatch details of the offer letter viz., date of dispatch, mode of service, proof of service, number of application forms received etc. Furthermore, the company has not submitted any evidence to substantiate the relationship between the primary persons who were offered shares and the relatives of the primary person.

36. Secondly, it is observed from the Minutes of the Board Meetings pursuant to which the allotment of shares was made to the applicants that the Board Resolution for the same read as follows:

"*RESOLVED THAT company do allot (specified no.) Equity shares of Rs. 10 each at par to applicants detailed as per list placed before the meeting and initiated by the chairman for the purpose of identification.*"

37. In view of the above resolution, it can be held that the company had offer / allotted equity shares to the applicants as per the list placed before the Board. It did not qualify the said list by stating that the equity shares are being allotted to people other than to whom the offer was made or that the equity shares are allotted to family members / friends of individuals to whom the offer was made. In the absence of any qualification, it is held that all the individuals whose name appeared on the list placed before the Board, were made the offer and post subscription, they were allotted shares by the company. Thus, I find that the company had made an offer / allotment of equity shares to more than 41 individuals.

38. Further, as per the submission of the company, 41 individuals subscribed to the shares of the company in their own names and in the names of their family

members or close associates, indicates that the company was aware that the offer / allotment of equity shares is made in a way 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. Therefore, the offer/ allotment of equity shares, even if it were to be accepted as one offer / allotment of equity shares to 41 persons, would not fall under Section 67(3) (a) of the Companies Act, 1956. Therefore, the offer / allotment of equity shares would be treated as made to the "public".

39. From another perspective, it is observed that the offer letter expressly stated that the offer does not carry any right of renunciation. Thus, if there is no clause regarding right of renunciation in favour of others in the offer made by the issuer and individuals other than to whom the offer was made, have also received the said offer have subscribed to the offer, although they were not the initial recipient of the offer and their subscription has been accepted by the issuer, the same demonstrates that the particular offer was also made by the issuer to the individual who ultimately subscribed to it apart from the initial recipient of the offer. Therefore, even if the submission of the company, that it was at the instance of the 41 individuals that shares were issued to the family members and associates is accepted, it is observed that the offer / allotment of shares by the company calculated in resulting, indirectly, in the shares being available for subscription by persons other than those receiving the offer. Hence, I am constrained to hold that the offer does not fall under Section 67(3) (a) of the Companies Act, 1956 and would be treated as made to the "public".

40. With respect to the second sub-issue, I note that the company has contended that the parties to whom the offer was made are part of the community to which the Promoters / Directors of Aakruti belong. Thus, the offer is a domestic concern of Aakruti. Further, it has submitted that while computing the total number of offer made, there are certain class of person who come within the criteria of exempted persons and therefore an offer made to such person cannot be included in the total offers made. The exempted categories as submitted by the company includes offer

made to Promoters, Directors, existing members and their respective relatives. sympathy

41. With respect to the submission of the company, I note that in *Sahara Case*, the following was observed by the Hon'ble Apex Court:

*"Following situations, it is generally regarded, as not an offer made to public.*

- *Offer of securities made to less than 50 persons;*
- *Offer made only to the existing shareholders of the company (Right Issue);*
- *Offer made to a particular addressee and be accepted only persons to whom it is addressed;*
- *Offer or invitation being made and it is the domestic concern of those making and receiving the offer.*

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

42. Further, Hon'ble Apex Court in the *Sahara Case* while dealing with the concept of invitation "to the public" under Section 67 of the Companies Act, 1956 observed as follows:

"*…at best "private placement" within the meaning of the assertions made on behalf of the appellant-companies, would essentially fall in the two categories expressed in clauses (a) and (b) of subsection (3) of section 67 of the Companies Act. Clearly, since the first proviso under section 67(3) limits the upper limit thereunder to less than 50, an invitation/offer by way of "private placement" under the Companies Act, can under no circumstances exceed 49…"*

43. In this above context, as noted in preceding paragraphs that on a perusal of the list of allottees submitted by the company it is observed that the submission of the company that the allottees belong to Kutchi Patel community, seems on the face of

it to be acceptable. I also note that the company has submitted that that relatives of Promoters and Directors of the company were allotted shares and other allottees to whom the allotment was made by the company belong to the community of Promoters / Directors of the Aakruti. Moreover, the company had also not issued any advertisement for the offer / allotment of shares or paid any brokerage / commission to a third party. However, in view of the provisions of Section 67 of the Companies act wherein while referring "to the public", offer / allotment of shares made to the community to which the Promoters / Directors of the company belong, is not a relevant parameter to be considered for the determination whether the offer / allotment of shares is made to the public. Therefore, I am constrained to find in the present matter that the offer / allotment of shares made to the persons to which the Promoters / Directors of the company belong, cannot be treated as a domestic concern. Further, as observed by the Hon'ble Apex Court in the *Sahara Case,* in light of the proviso to Section 67 (3) of Companies Act, if the offer / allotment of securities made by the company, exceeds 49 persons than it would not be treated as domestic concern / private placement i.e., identity of the person receiving the offer / allotment is irrelevant / immaterial. In the present case, the offer / allotment as per Aakruti's own admission has been made to 64 persons who are Promoters / Directors of the company or their relatives and to 41 persons who belong to Promoters / Directors of the company, thus taking the total of persons to whom the offer / allotment has been made by the company to more than 49 persons. Thus, the submission of the company that the offer / allotment made to 64 entities related to Promoters and Directors of the company should be excluded from total number of allottees, is not acceptable as the offer / allotment of shares is made to more than 49 persons.

44. In view of the aforesaid discussion, it is concluded that Section 67(3)(b) of the Companies Act, 1956 is not applicable in the present matter.

45. With respect to the third sub-issue of whether the offer to subscribe to the equity shares was made by the company to fifty persons or more, I note that in preceding paragraphs it has been held that the offer / allotment of equity shares made by the

company has calculated to result, directly or indirectly, in the shares becoming available for persons other than those receiving the offer and the said number exceeds 41 individuals / entities. Further, on the basis of Form 2 - Return of allotment, it is observed that the company has made an issuance of equity shares to 284 individuals / entities during the financial year 2007-2008. Here, it will be relevant to quote the observation of Hon'ble Supreme Court of India in the *Sahara case* wherein the Hon'ble Court observed as follows:

*"…The first proviso under section 67(3) of the Companies Act, limits the instant exceptions, contemplated under clauses (a) and (b) of section 67(3) only to situations where the invitation/offer is made to less than 50 person. Even though, clauses (a) and (b) of sub-section (3) of section 67 of the Companies Act, are an exception to sub-sections (1) and (2) of section 67 thereof, yet it must be clearly understood, that a mere fulfillment of the yardstick defining the exception (under clauses (a) and (b), aforesaid) would not bring the issue under reference out of the scope of the term "to the public". For that, it is essential to also satisfy the requirement of the proviso under section 67(3) i.e., the number of subscribers should not exceed 49. Only on the satisfaction of the twin requirements, delineated above, the issue/offer will "not" be treated as having been made "to the public"."*

46. Based on the aforesaid, it is held that the company has made offer / allotment of equity shares to more than 49 individuals / entities and the same falls within the purview of the first proviso of Section 67(3) of the Companies Act, 1956. Therefore, the offer/ allotment of equity shares by the company during the financial year 2007-2008 would be treated as made to the "public".

47. I find that the company has not claimed it to be a non–banking financial company or public financial institution within the meaning of Section 4A of the Companies Act, 1956. In view of the aforesaid, I, therefore, find that there is no case that the company is covered under the second proviso to Section 67(3) of the Companies Act, 1956.

48. Company has also contended that the focal point of Section 67(3) of Companies Act, 1956 is on "offer and invitation made" and not on "subscription" and allotment. In

this regard, reference may be made in this regard to *Sahara Case*. The relevant portions of the judgment read as follows:

"*However, after the amendment to the Companies Act, 1956 on 13.12.2000, every* ***private placement*** *made to fifty or more persons becomes an offer intended for the public and attracts the listing requirements under Section 73(1). Even those* ***issues*** *which satisfy Sections 67(3)(a) and (b) would be treated as an* ***issue*** *to the public if it is issued to fifty or more persons, as per the proviso to Section 67(3) and as per Section 73(1),"*

49. Reference is also made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in the matter of *Neesa Technologies Limited* vs. *SEBI (Appeal No. 311 of 2016)* which lays down that *"In terms of Section 67(3) of the Companies Act* ***any issue*** *to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations…"*

50. The above referred to paragraphs indicate that the trigger for public issue/deemed public issue is not only "offer/invitation to offer" but also "issue of shares/allotment of shares". Therefore, the contention of the company on this score cannot be accepted.

51. With respect to the submission of the company that in each tranche there were less than 50 people, reference can be made to the order dated April 28, 2017 of Hon'ble SAT in *Neesa Technologies Limited* vs*. SEBI* decided on April 28, 2017, wherein it was argued by the appellant that the NCD issue was a private placement issued to only less than 50 persons at a time. The total number of subscribers come to 341 since they have issued multiple (8) tranches of NCDs. The said argument of the appellant was not accepted by Hon'ble SAT and the Hon'ble Tribunal observed as follows:

"*In terms of Section 67(3) of the Companies Act any issue to '50 persons or more' is a public issue and all public issues have to comply with the provisions of Section 56 of Companies Act and ILDS Regulations. Accordingly, in the instant matter the appellant*

*have violated these provisions and their argument that they have issued the NCDs in multiple tranches and no tranche has exceeded 49 people has no meaning"*.

52. In light of the aforesaid observation of Hon'ble SAT, the submission of the company that number of persons to whom the equity shares were offered / allotted to are less than 50 persons or more at a time, is not tenable.

53. In view of the aforesaid discussions, I find that the *offer / allotment of equity shares* by the company falls not only within the first proviso of Section 67(3) of Companies Act, 1956 but also does not satisfy the requirements of Sections 67(3) (a) and (b) of the Companies Act, 1956 for not being a "public offer". Further, it is held that the company had made one offer / allotment of equity shares to 284 individuals / entities in the financial year 2007-2008 and had mobilised an amount of Rs. 29.83 crore. Hence, the *offer / allotment of equity shares* is deemed to be a public issue and the company was mandated to comply with the 'public issue' norms as prescribed under the Companies Act, 1956.

54. Moreover, since the offer / allotment of equity shares is deemed to be a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under Section 73 of the Companies Act, 1956. As per Sections 73(1) and (2) of the Companies Act, 1956, a company is required to make an application to one or more recognized stock exchanges for permission for the shares or debentures to be offered to be dealt with in the stock exchange and if permission has not been applied for or not granted, the company is required to forthwith repay with interest all moneys received from the applicants.

55. Noticees have not submitted any reply in the matter with respect to the aforesaid provisions of Companies Act, 1956. Therefore, the allegations of non-compliance of the above provisions were not denied by the company or its Directors. I also find that no records have been submitted to indicate that it has made an application seeking listing permission from Stock Exchange or refunded the amounts on account of such failure. Therefore, I find that the company has contravened the said provisions. The company has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that the company

has also not complied with the provisions of Section 73(3) of the Companies Act, 1956 which mandates that the amounts received from investors shall be kept in a separate bank account. Since the company has not provided any evidence of repayment of money collected in terms of Section73(2) of the Companies Act, 1956, I find that Section 73(2) of the Companies Act, 1956 has not been complied with.

56. Section 2(36) of the Companies Act, 1956 read with Section 60 of the Companies Act, 1956 thereof, mandates a company to register its 'prospectus' with the RoC, before making a public offer/ issuing the 'prospectus'. As per the aforesaid Section 2(36) of the Companies Act, 1956, "prospectus" means any document described or issued as a prospectus and includes any notice, circular, advertisement or other document inviting deposits from the public or inviting offers from the public for the subscription or purchase of any shares in, or debentures of, a body corporate. As the offer / allotment of equity shares was a deemed public issue of securities, the company was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that the company has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer / allotment of equity shares. I, therefore, find that the company has not complied with the provisions of Section 60 of the Companies Act, 1956.

57. In terms of Section 56(1) of the Companies Act, 1956, every prospectus issued by or on behalf of a company, shall state the matters specified in Part I and set out the reports specified in Part II of Schedule II of that Act. Further, as per Section 56(3) of the Companies Act, 1956, no one shall issue any form of application for shares in a company, unless the form is accompanied by abridged prospectus, containing disclosures as specified. Company has submitted that it has not issued any prospectus in the matter. As the offer / allotment of equity shares was a deemed public issue of securities, the company was required to issue a prospectus containing the disclosures mentioned in Section 56(1) of the Companies Act, 1956, or issued application forms accompanying the abridged prospectus. Therefore, I find that, the company has not complied with Sections 56(1) and 56(3) of the Companies Act, 1956.

58. I note that the offer/ allotment of equity shares during the financial year 2007-2008 were made while DIP Guidelines were in force. Clause 1.4 of the DIP Guidelines makes the provisions contained therein applicable to all 'public issues' by listed or unlisted companies. 'Public issue' is defined in Clause 1.2 (xxiii) to mean "an invitation by a company to public to subscribe to the securities offered through a prospectus." This definition read with the provisions of the Companies Act cited earlier in this Order, makes it clear that DIP Guidelines would apply to a public offer of equity shares as well. Therefore, I hold that the company was also required to comply with the following provisions of the DIP Guidelines read with regulation 301 of the ICDR Regulations in respect of the offer and allotments made during the financial year 2007-2008:

    a. *Clause 2.1.1. – (Filing of offer document)*
    b. *Clause 2.1.4 – (Application for listing)*
    c. *Clause 2.2 – (Initial Public Offerings by Unlisted Companies)*
    d. *Clause 4.11 – (Lock-in of minimum specified promoters contribution in public issues)*
    e. *Clause 4.14 – (Lock-In of pre-issue share capital of an unlisted company)*
    f. *Clause 5.3.1 – (Memorandum of understanding)*
    g. *Clause 5.4.1 – (Appointment of Merchant Bankers)*
    h. *Clause 5.6.2 – (The lead merchant banker)*
    i. *Clause 5.6A – (Pre-issue Advertisement)*
    j. *Clause 6.0 – (Contents of offer documents),*
    k. *Clause 8.8.1 – (Opening & closing date of subscription of securities),*

59. As per regulation 301(1) of the ICDR Regulations, the DIP Guidelines *"shall stand rescinded"*. However, regulation 301(2) of the ICDR Regulations, provides that:

    *"(2) Notwithstanding such rescission:*

    *(a) anything done or any action taken or purported to have been done or taken including observation made in respect of any draft offer document, any enquiry or investigation commenced or show cause notice issued in respect of the said Regulations shall be deemed to have been done or taken under the corresponding provisions of these regulations.*

*(b) any offer document, whether draft or otherwise, filed or application made to the Board under the said Regulations and pending before it shall be deemed to have been filed or made under the corresponding provisions of these regulations."*

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

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

*"SEBI can exercise its jurisdiction under Sections 11(1), 11(4), 11A(1)(b) and 11B of SEBI Act and Regulation 107 of ICDR 2009 over public companies who have issued shares or debentures to fifty or more, but not complied with the provisions of Section 73(1) by not listing its securities on a recognized stock exchange"*

61. In this regard, it is pertinent to note that by virtue of Section 55A of the Companies Act, 1956, SEBI has to administer Section 67 of that Act, so far as it relates to issue and transfer of securities, in the case of companies who intend to get their securities listed. While interpreting the phrase "intend to get listed" in the context of deemed public issue the Hon'ble Supreme Court in Sahara Case observed-

*"…But then, there is also one simple fundamental of law, i.e. that no-one can be presumed or deemed to be intending something, which is contrary to law. Obviously therefore, "intent" has its limitations also, confining it within the confines of lawfulness…"*

*"…Listing of securities depends not upon one's volition, but on statutory mandate…"*

*"…The appellant-companies must be deemed to have "intended" to get their securities*

*listed on a recognized stock exchange, because they could only then be considered to have proceeded legally. That being the mandate of law, it cannot be presumed that the appellant companies could have "intended", what was contrary to the mandatory requirement of law…"*

62. In view of the above findings, I am of the view that the company engaged in fund mobilizing activity from the public, through the offer / allotment of equity shares and has contravened the provisions of Sections 56(1), 56(3), 2(36) read with Sections 60, 73(1), 73(2), 73(3) of the Companies Act, 1956 and above mentioned provisions pertaining to the DIP Guidelines read with ICDR Regulations.

***Issue No. 3- If the findings on Issue No. 2 are found in the affirmative, who are liable for the violations committed?***

63. From the submission of the company and MCA records, I find that the following persons were the Directors of the company during the financial year 2007-2008:

| Sl. No. | Name of the Director | Designation | Date of Appointment | Date of Cessation |
|---|---|---|---|---|
| 1. | Manilal Valji Patel | Chairman & Managing Director* | 8/5/2006 | - |
| 2. | Vithal Shamji Patel | Joint Managing Director** | 8/5/2006 | - |
| 3. | Mahesh Narshi Patel | Director – Operation | 8/5/2006 | - |
| 4. | Vinesh Shamji Patel | Director – Operation | 8/5/2006 | - |
| 5. | Shantilal Karamshi Patel | Executive Director | 8/5/2006 | - |
| 6. | Hiralal Samji Rangani | Director - Operation | 20/4/2007 | - |
| 7. | Anita Pirgal | Director | 9/6/2007 | 23/9/2011 |
| 8. | Sunil Naik | Professional Director | 1/4/2007 | 30/3/2011 |
| 9. | Shailendra Jhallawar | Professional Director | 1/4/2007 | 26/9/2013 |

** He was Managing Director during the financial year 2007-08.*

*** He was Joint Managing Director during the financial year 2007-08.*

64. Sections 56(1) and 56(3) read with 56(4) of the Companies Act, 1956 imposes the

liability on the company, every Director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, Aakruti and its Directors at that time, are held liable for the violation of Sections 56(1), 56(3) and 60 of the Companies Act, 1956.

65. As far as the liability for non-compliance of Section 73 of Companies Act, 1956 is concerned, as stipulated in Section 73(2) of the said Act, the company and every Director of the company who is an *officer in default* shall, from the eighth day when the company becomes liable to repay, 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 if the money is not repaid forthwith. With regard to liability to pay interest, I note that as per Section 73 (2) of the Companies Act, 1956, the company and every Director of the company who is an *officer in default* is jointly and severally liable, to repay all the money with interest at prescribed rate. In this regard, I note that in terms of Rule 4D of the Companies (Central Governments) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%. Therefore, I hold that Aakruti is liable to refund the money along with interest at prescribed rate.

66. As per Section 5 of Companies Act, 1956, *"officer who is in default"* means (a) the Managing Director/s; (b) the Whole-Time Director/s; (c) the manager; (d) the secretary; (e) any person in accordance with whose directions or instructions the Board of Directors of the company is accustomed to act; (f) any person charged by the Board with the responsibility of complying with that provision; (g) where any company does not have any of the officers specified in clauses (a) to (c), any Director or Directors who may be specified by the Board in this behalf or where no Director is so specified, all the Directors.

67. In this regard, I note that Hon'ble SAT vide order dated February 14, 2019 in the matter of *Pritha Bag* vs*. SEBI* stated that *"... In the instant case, there is sufficient material on record to show that there was a managing director and in the absence of*

*any finding that the appellant was entrusted to discharge the application contained in Section 73 of the Companies Act, the direction to refund the amount along with interest from the appellant is wholly illegal…"*

68. Further, it is pertinent to note the observation of Hon'ble SAT vide Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, that:

*… Section 5 of the Companies Act, 1956 defines the expression 'officer who is in default' to mean the officers named therein. Section 5(g) provides that where any company does not have any of the officers specified in clauses (a) to (c) of Section 5, then any director who may be specified by the Board in that behalf or where no director is so specified then all the directors would be "officer who is in default". In the present case, no material is brought on record to show that any of the officers set out in clauses (a) to (c) of Section 5 or any specified director of BREDL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. In such a case, as per Section 5(g) of the Companies Act, 1956 BREDL and all the directors of BREDL are liable. Therefore, decision of the WTM that all directors of BREDL including the appellant would constitute "officer in default" cannot be defaulted.*

*… Admittedly, the appellant was a director of BREDL when amounts were collected by BREDL in contravention of the public issue norms and there is nothing on record to suggest that any particular officer/director was authorised to comply with the public issue norms. In such a case, all directors of BREDL including the appellant would be "officer in default" under Section 73(2) read with Section 5 of the Companies Act, 1956."*

69. In view of aforesaid observations of Hon'ble SAT, I am of the view that the obligation to refund the amount with interest jointly and severally with the company is on the "officer who is in default" and is limited to the extent of amount collected during his/her tenure as officer in default of the company.

70. It is noted from the Annual Report of the company for the financial year 2007 -2008 and from the minutes of Board Meeting of the company held on April 1, 2007 that Mr. Manilal V Patel was appointed as Chairman and Managing Director of the company. Further, Mr. Vithal S Patel was appointed as the Joint Managing Director

of the company. Thus, I find that Mr. Manilal V Patel and Mr. Vithal S Patel were Managing Directors of Aakruti when the company made the offer / allotment of equity shares to 284 people during the financial year 2007-2008.

71. In the preceding paragraphs, I have held that Aakruti made the offer / allotment of equity shares to 284 investors during the financial year 2007-2008 and mobilised funds to the tune of Rs. 29.83 crore. As noted in preceding paragraph, Mr. Manilal V Patel and Mr. Vithal S Patel were Managing Directors of Aakruti. Further, in view of Hon'ble SAT order in the matter of *Manoj Kumar Agarwal* and *Pritha Bag* and considering the facts and circumstances of case, I note that in the present matter, during the financial year 2007-2008, in accordance with Section 5(a) of Companies Act, 1956, Mr. Manilal V Patel and Mr. Vithal S Patel being the Managing Directors of Aakruti are the *officers in default* for the period of offer / allotment of equity shares during the financial year 2007-2008. Therefore, Mr. Manilal V Patel and Mr. Vithal S Patel being the Managing Directors during the financial year 2007-2008 who are the *officers in default*, are liable to make refund of the money collected during their tenure in the financial year 2007-2008, along with interest at the rate of 15 % per annum, under Section 73(2) of the Companies Act, 1956 for the non-compliance of the above mentioned provisions.

72. Since, the liability of the company to repay under Section 73(2) of the Companies Act, 1956 is continuing and such liability continues till all the repayments are made, Mr. Manilal V Patel and Mr. Vithal S Patel are co-extensively responsible along with the company for making refunds along with interest under Section 73(2) of the Companies Act, 1956 read with Rule 4D of the Companies (Central Government's) General Rules and Forms, 1956. Therefore, I find that Aakruti, Mr. Manilal V Patel and Mr. Vithal S Patel, are jointly and severally liable to refund the amounts collected from the investors for the respective period mentioned in above paragraph, with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions.

73. Further, I note that during the period of fund mobilization during the financial year 2007-2008, Mr. Mahesh Narshi Patel, Mr. Vinesh Shamji Patel, Mr. Shantilal

Karamshi Patel, Mr. Hiralal Samji Rangani, Ms. Anita Pirgal, Mr. Sunil Naik and Mr. Shailendra Jhallawar were Directors of Aakruti and Mr. Manilal V Patel and Mr. Vithal S Patel were the Managing Directors of Aakruti. Therefore, following the reasoning as provided by Hon'ble SAT in the matter of *Pritha Bag* vs. *SEBI* and *Manoj Agarwal* vs. *SEBI*, I am of the view that for the fund mobilization during the financial year 2007-2008, Mr. Mahesh Narshi Patel, Mr. Vinesh Shamji Patel, Mr. Shantilal Karamshi Patel, Mr. Hiralal Samji Rangani, Ms. Anita Pirgal, Mr. Sunil Naik and Mr. Shailendra Jhallawar are not liable for refund of money as there is sufficient documentary evidence available on record which indicates that Aakruti had Managing Directors namely, Mr. Manilal V Patel and Mr. Vithal S Patel (who are officers in default as per Section 5(a) of Companies Act, 1956) during period of fund mobilization during the financial year 2007-2008.

74. From the material available on record and the details of the appointment and resignation of the directors of Aakruti as reproduced in preceding paragraphs, it is noted that Mr. Mahesh Narshi Patel, Mr. Vinesh Shamji Patel, Mr. Shantilal Karamshi Patel, Mr. Hiralal Samji Rangani, Ms. Anita Pirgal, Mr. Sunil Naik and Mr. Shailendra Jhallawar were the Directors of Aakruti during the period of issuance and allotment of equity shares (financial year 2007-2008). By virtue of being Directors, they are expected to exercise the powers on behalf of the company in discharging the obligations of the company. In this regard, the following observation of the Hon'ble Supreme Court of India in the matter of *N Narayanan* vs. *Adjudicating Officer, Sebi* decided on April 26, 2013 may be apposite:

*"…*

*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…"*

75. Further, with respect to the breach of law and duty by a Director of a company, I refer to and rely on the following observations made by the Hon'ble High Court of Madras in *Madhavan Nambiar* vs. *Registrar of Companies* (2002 108 Cas 1 Mad):

*"13. .... A director either full time or part time, either elected or appointed or nominated is bound to discharge the functions of a director and should have taken all the diligent steps and taken care in the affairs of the company.*

*14. In the matter of proceedings for negligence, default, breach of duty, misfeasance or breach of trust or violation of the statutory provisions of the Act and the rules, there is no difference or distinction between the whole-time or part time director or nominated or co-opted director and the liability for such acts or commission or omission is equal. So also the treatment for such violations as stipulated in the Companies Act, 1956."*

76. A person cannot assume the role of a Director in a company in a casual manner. The position of a 'Director' in a public company comes along with responsibilities and compliances under law associated with such position, which have to be fulfilled by such Director or face the consequences for any violation or default thereof. The Director cannot therefore wriggle out from liability. A Director who is part of a company's Board shall be responsible and liable for all acts carried out by the company.

77. Before proceeding further, I note from the SCNs and supplementary SCN issued in the present matter that the same has not been issued to Mr. Mahesh Narshi Patel, Mr. Vinesh Shamji Patel, Mr. Shantilal Karamshi Patel and Mr. Hiralal Samji Rangani in their capacity as Directors of the company. In view of the same, their role, if any in offer / allotment of equity shares made by the company during the financial year 2007-2008 is not being discussed in this order. However, SEBI may initiate action, if any, against them in terms of applicable law.

78. In the facts and circumstances of the present matter where offer / allotment of equity shares have been made to 284 individuals / entities, I note from the minutes of the Board Meeting dated April 7, 2007 that Mr. Sunil Naik and Mr. Shailendra Jhallawar were present but Ms. Anita Pirgal was not present, the Chairman of the company informed the Board that "*company has increase authorize capital to 15 crores and there may be chances that company may receive application from persons*

*more than 50 persons so it is advisable to convert company from Private Limited to closely held Public Limited Company.*" It is further observed that in subsequent Board Meetings held during the financial year 2007-2008 where the company has decided to allot shares post receiving application forms from persons for allotment of shares which is on seven instances, Mr. Sunil Naik and Mr. Shailendra Jhallawar have attended the meetings. It is noted from the minutes that list of applicants was placed before the Board at such meetings at the time of discussions. Moreover, Mr. Shailendra Jhallawar was himself allotted 50,000 shares by the company. Thus, the submission of the company that Mr. Sunil Naik and Mr. Shailendra Jhallawar had no role to play in the overall working of the company and were bona fide third parties with no interest other than professional fees, is not acceptable. As seen above, they had knowledge that the company was offering / allotting equity shares to more than 49 individuals / entities, which is attributable to the Board process and they had attended all the Board Meetings. Thus, if they would have exercised due diligence and made meaningful inquiries, then they would have realised that offer / allotment of equity shares made by the company was to more than 49 individuals / entities especially in light of the fact that chances of company receiving application from persons more than 49 was already raised in the Board Meeting held on April 7, 2007.

79. With respect to Ms. Anita Pirgal, I note that she had joined the company on June 9, 2007. From the minutes of the Board Meeting held on June 26, 2007, I note that the meeting was attended by her and that the company had decided to allot shares post receiving application forms from persons for allotment of shares (Rs 2 as application money) as per the list of applicants placed before the Board. Thus, she had the knowledge that the company was offering / allotting equity shares to persons. Further, from the minutes of the Board Meetings held on July 1, 2007 and August 1, 2007, it is noted that the company had made a call on shares (Rs. 3 per shares from unpaid capital of the company) which shows that company had issued / allotted shares. Moreover, from the minutes of the AGM held on August 7, 2007 which was attended by her, it is observed that the Board of Directors of the company were authorised on behalf of the company to create, issue, offer and allot

up to 2,00,00,000 equity shares of Rs. 10 each at par in the course of one or more 'private offering' to such person or persons other than and including existing shareholders of the company. Furthermore, Ms. Anita Pirgal was herself allotted 10,00,000 shares by the company. The aforesaid demonstrates that Ms. Anita Pirgal had the knowledge that the company had offered / allotted equity shares to individuals / entities. Thus, if she would have exercised due diligence and made meaningful inquiries, then she would have realised that offer / allotment of equity shares made by the company was to more than 49 persons.

80. It is noted that the liability to repay is a statutory liability under Section 73(2) of the Companies Act, 1956, which mandates the repayment to be made forthwith. The present order only enforces the pre-existing liability of the company and other officers in default to repay along with interest. It is the responsibility of every Director on behalf of the company to ensure that the company complies with the obligation under Section 73(2) of the Companies Act, 1956 forthwith. One may argue that the liability of the company is crystalised only by virtue of an Order by SEBI, therefore, till then there was no liability on the company and therefore, on the Directors. If such argument is accepted, all the legal obligations and compliance requirements pose the risk of being not discharged or postponed on the pretext of non-crystallization. Also, it would make the compliance of regulatory/statutory requirement imposed on the companies bereft of clarity and incentivise delay in compliance of statutory obligation by the companies until such non-compliance is enforced through proceedings such as this. If the Board of Directors of a company cannot be considered to be liable to ensure the legal obligations cast upon a company, there would be no human instrumentality for discharge of such legal obligations on behalf of the company. Considering the fact that Aakruti has not complied with its obligation to repay the amounts collected in violation of the regulations and such liability is continuing, I find that the same can only be ensured by its Directors.

81. It is noted in light of the continued non-compliance of Aakruti's refund liability, Mr. Sunil Naik, Mr. Shailendra Jhallawar and Ms. Anita Pirgal who were the Directors of

Aakruti during the period of issuance and allotment of equity shares, albeit not liable for refund, are also obligated to ensure compliance of the refund obligation of the company during their respective period of directorship. The failure on the part of the Directors to discharge their obligation (to ensure timely refund to the investors by the company as mandated under law) on behalf of the company to ensure that such repayment is made by the company needs to be dealt with by way of appropriate directions against them in this regard.

82. Furthermore, I note that the company has submitted that Noticee Nos. 9 to 15 are family members and relatives of the Promoters. In this regard, I note that in the present matter Noticee Nos. 8 to 15 were the Promoters of the company when the money through offer / allotment of equity shares was raised by Aakruti during the financial year 2007-2008.

83. In the given facts and circumstances of the matter, Noticees No. 8 to 15 have not denied knowledge/connivance/consent in the act/omission which constitutes violation of the provisions of public issues and public interest requires that the persons who had such knowledge/connivance/consent be made accountable to the investors. Further, the company has submitted that it had raised additional capital from close relatives, friends and persons related to community of Promoters (Patel) of company. The same shows that the Promoters of the company have played an active role in mobilizing funds for the company from their community. Here, it will be relevant to quote the order Hon'ble SAT in the matter of *Mrs. Manisha B. Kadhi* vs. *SEBI and Ors.* decided on November 12, 2020 wherein the Hon'ble Tribunal observed as follows:

*"…We are of the opinion that a promoter plays a vital role in the raising of the capital for a company and, therefore, the role of a promoter is subject to greater scrutiny irrespective of his shareholding and his position in the management of the company. It is immaterial that the appellants are not actively involved in the management of the company."*

84. In view of the same, I find that Noticees No. 8 to 15 are liable to be debarred for an appropriate period of time since they were Promoters of the company during the relevant period.

85. Before concluding, I would emphasise that on a preponderance of probability basis, it appears that the offer / allotment of equity shares was made by Aakruti to individuals belonging to the community of its Promoters / Directors / Members and that no public notice / advertisement was done by Aakruti for the offer / allotment of equity shares. Moreover, no record of any brokerage / commission paid to any third party is also available. When the aforesaid facts are examined, it shows that the present case stands on a different footing from other deemed public issue cases. To begin with, on an examination of list of allottees, it is observed that seemingly the allottees belong to Kutchi Patel community and most of the allottees are geographically located in areas around Mumbai. Thus, it is not the case that funds have been mobilised by the company from several thousands of people who are spread across the length and breadth of this country. Further, there is no material brought on record to indicate that third parties were employed by the company to solicit funds from the allottees or any brokerage / commission was paid to anyone. This seems to indicate that the Promoters / Directors of the company had reached out to their community people to circulate the offer / allotment of equity shares in order to solicit funds for the company. From the materials on record, it is also observed that the company had made an offer / allotment of equity shares only in one financial year (2007-2008). So, it is not the case that the company has repeatedly made offer / allotment of equity shares to the public in subsequent financial years. Credence to it is lent by the fact that the overall shareholder strength of the company, as submitted by it, appears to have reduced to 196 shareholders. Lastly, it is also noted that except the complainant in the present matter there are no pending investor complaints against the company. The same when seen along with the way the company has maintained its records pertaining to the funds received (minutes of AGM, minutes of Board Meetings, list of allottees showing the relationship inter-se and with the company including geographical location etc.) indicates that the financial transactions under reference,

may not be dubious in nature.

86. In light of the aforesaid I note that the explanations and evidence given by the Noticees explains the actions of Aakruti. However, in light of the mandatory statutory obligation under Section 73 (2) of Companies Act, 1956, I am constrained to follow the letter of the law in terms of determining violations. However, existence of a statutory requirement should not be the sole criteria for the directions to be issued against the Noticees. The totality of the circumstances has to be considered, before arriving at any directions. In the facts and circumstances of the case, existence of a statutory mandate should not excessively outweigh or influence the other relevant facts of the case in shaping directions to be issued by SEBI against the company/promoters /directors. Therefore, before any kind of directions are issued against the Noticees, various circumstances of the matter have to assessed along with the statutory requirement under Section 73 (2) of the Companies Act, 1956. The emphasis has to be laid not only on the statutory requirement under Section 73 (2) of the Companies Act, 1956 but also on the joint assessment of various circumstances and the collective analysis of those circumstances along with the statutory requirement, resulting in directions which are appropriate depending on the facts and circumstances of the case. Further, appropriate directions with respect to the refund to be made to the investors, have been made keeping in view the extraordinary situation caused by Covid- 19 pandemic.

87. In view of the foregoing, the legal consequence of not adhering to the norms governing the issue of securities to the public and making repayments as directed under Section 73(2) of the Companies Act, 1956, is to mandatorily direct Aakruti and its Managing Directors during the relevant period namely Mr. Manilal V Patel and Mr. Vithal S Patel to refund the monies collected, with interest to such investors. Also, in order to safeguard the interests of investors, to prevent further harm to investors and to ensure orderly development of securities market, all the Noticees becomes liable to be debarred for an appropriate period of time.

88. In view of the discussion above, appropriate action in accordance with law needs to

be initiated against Aakruti, its Promoters and its Directors.

***ORDER***

89. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with Sections 11, 11(4), 11A and 11B(1) of the SEBI Act, hereby issue the following directions:

89.1. Aakruti along with Mr. Manilal V Patel and Mr. Vithal S Patel shall forthwith refund, to the investors, the money collected by the company, during their tenure as Managing Director / Joint Managing Director of Aakruti, through the issuance of equity shares (including the application money collected from investors during their respective period tenure of Managing Director, till date, pending allotment of securities, if any), with an interest of 15% per annum, from the eighth day of collection of funds, till the date of actual payment.

89.2. The repayments and interest payments to investors shall be effected only through Bank Demand Draft or Pay Order both of which should be crossed as "Non-Transferable" or through any other appropriate banking channels with clearly identified beneficiaries.

89.3. Mr. Manilal V Patel and Mr. Vithal S Patel are directed to provide a full inventory of their assets and properties and details of all their bank accounts, demat accounts and holdings of mutual funds / shares / securities, if held in physical form and demat form.

89.4. Aakruti and its present Directors including Mr. Manilal V Patel, Mr. Vithal S Patel, Mr. Mahesh Narshi Patel, Mr. Vinesh Shamji Patel, Mr. Shantilal Karamshi Patel and Mr. Hiralal Samji Rangani, are directed to provide a full inventory of all the assets and properties and details of all the bank accounts, demat accounts and holdings of mutual funds / shares / securities, if held in physical form and demat form, of the company.

89.5. Aakruti and its present Directors including Mr. Manilal V Patel, Mr. Vithal S

Patel, Mr. Mahesh Narshi Patel, Mr. Vinesh Shamji Patel, Mr. Shantilal Karamshi Patel and Mr. Hiralal Samji Rangani are prevented from selling the assets, properties and holding of mutual funds/shares/securities held in demat and physical form, by the company except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund / repayment to the investors till the full refund / repayment as directed above is made.

89.6. Mr. Manilal V Patel and Mr. Vithal S Patel are prevented from selling their assets, properties and holding of mutual funds/shares/securities held by them in demat and physical form except for the sole purpose of making the refunds as directed above and deposit the proceeds in an Escrow Account opened with a nationalized Bank. Such proceeds shall be utilized for the sole purpose of making refund/repayment to the investors till the full refund/repayment as directed above is made.

89.7. Aakruti and on behalf of the company its present Directors including Mr. Manilal V Patel, Mr. Vithal S Patel (Mr. Manilal V Patel and Mr. Vithal S Patel on their own behalf and on behalf of the company), Mr. Mahesh Narshi Patel, Mr. Vinesh Shamji Patel, Mr. Shantilal Karamshi Patel and Mr. Hiralal Samji Rangani shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 30 days of this Order coming into effect.

89.8. After completing the aforesaid repayments, Aakruti and on behalf of the company its present Directors including Mr. Manilal V Patel, Mr. Vithal S Patel (Mr. Manilal V Patel and Mr. Vithal S Patel on their own behalf and on behalf of the company), Mr. Mahesh Narshi Patel, Mr. Vinesh Shamji Patel, Mr. Shantilal Karamshi Patel and Mr. Hiralal Samji Rangani shall file a report of such completion with SEBI, within a period of six months from the

date of this order coming into effect, certified by two independent peer reviewed Chartered Accountants who are in the panel of any public authority or public institution. For the purpose of this Order, a peer reviewed Chartered Accountant shall mean a Chartered Accountant, who has been categorized so by the Institute of Chartered Accountants of India holding such certificate.

89.9. The present Directors including Mr. Manilal V Patel, Mr. Vithal S Patel, Mr. Mahesh Narshi Patel, Mr. Vinesh Shamji Patel, Mr. Shantilal Karamshi Patel and Mr. Hiralal Samji Rangani are directed to ensure that Aakruti complies with the with the aforesaid applicable directions including liability to refund as specified in paragraph 89.1 of this Order.

89.10. In case of failure of Aakruti, Mr. Manilal V Patel and Mr. Vithal S Patel to comply with the aforesaid applicable directions, SEBI, on the expiry of six months period from the date of this Order coming into effect may recover such amounts, from the company and the Directors liable to refund as specified in paragraph 89.1 of this Order, in accordance with Section 28A of the SEBI Act including such other provisions contained in securities laws.

89.11. Aakruti is directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 1 (one) year from the date of completion of refunds to investors as directed above.

89.12. Mr. Manilal V Patel and Mr. Vithal S Patel are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 1 (one) year from the date of completion of refunds to investors as directed above. Mr. Manilal V Patel and Mr. Vithal S Patel are also restrained from associating themselves with any listed public company and any public

company which intends to raise money from the public except Aakruti Nirmiti Ltd., or any intermediary registered with SEBI from the date of this Order till the expiry of 1 (one) year from the date of completion of refunds to investors.

89.13. Ms. Anita Pirgal, Mr. Sunil Naik and Mr. Shailendra Jhallawar are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of six months from the date of this Order. The above said persons are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI for a period of six months from the date of this order.

89.14. Manilal V Patel (HUF), Vithal S Patel (HUF), Mahesh N Patel (HUF), Vinesh S Patel (HUF), Shantilal K Patel (HUF), Hiralal Rangani (HUF), Aakruti Concepts Pvt Ltd, Shri Vishvadeep Harilal Patel, Smt. Rekha Mahesh Patel, Smt. Neeta Shantilal Patel, Smt. Madhu Manilal Patel, Smt. Ramila Vinesh Patel, Smt. Rachna Vithal Patel and Shri Dharmishth Harilal Patel are restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of six months from the date of this Order. The above said persons are also restrained from associating themselves with any listed public company and any public company which intends to raise money from the public except Aakruti Nirmiti Ltd., or any intermediary registered with SEBI for a period of six months from the date of this order.

89.15. Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of the Noticee Nos. 1 to 20 shall remain frozen.

89.16. The above directions shall come into force with immediate effect.

90. SEBI may consider initiating action, if any, against Mr. Mahesh Narshi Patel, Mr. Vinesh Shamji Patel, Mr. Shantilal Karamshi Patel and Mr. Hiralal Samji Rangani in

their capacity as Directors of the company during the financial year 2007-2008 when the offer / allotment of equity shares was done by the company to more than 49 persons, in terms of applicable law.

91. Copy of this order shall be sent to all the Noticees.

92. Copy of this Order shall be forwarded to the recognised stock exchanges, depositories and registrar and transfer agents for information and necessary action.

93. A copy of this Order shall also be forwarded to the Ministry of Corporate Affairs / concerned Registrar of Companies, for their information and necessary action.

-Sd-

**DATE: May 3, 2021**
**PLACE: MUMBAI**

**MADHABI PURI BUCH**
**WHOLE TIME MEMBER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**