

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

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

In the matter of M/s Jivan Sathi Dream Projects Limited

In respect of:

1. M/s Jivan Sathi Dream Projects Limited (CIN: U45400WB2010PLC150439; PAN: AACCJ3999G)
 2. Shri Mithun Chakraborty (DIN: 02750738; PAN: AIDPC5794L),
 3. Shri Abhijit Khan (DIN: 06559761; PAN: ALPPK7212C),
 4. Shri Nilanjan Dutta Chowdhury (DIN: 05190679; PAN: ASDPC5559M),
 5. Shri Pradip Chakraborty (DIN: 02750760; PAN: AJJPC6225B),
 6. Shri Biswajit Pramanik (DIN: 03018031; PAN: BVJPP4375A),
 7. Shri Nitish Chandra Tarafdar (PAN: ABPPT8081J),
 8. Smt Shikha Chakraborty (PAN: AKJPC3739K),
 9. Shri Chiranjit Kundu (PAN: AVOPK9564G),
 10. M/s. Jivan Sathi Life Care Agencies Private Limited (CIN: U74900WB2009PTC139173; PAN: AACCJ2454N)
 11. Smt Roshni Guha (DIN: 03382122; PAN: AVJPG3285H)
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1. M/s Jivan Sathi Dream Projects Limited (hereinafter referred to as “JSDPL” or “Company”), having its registered office at “Premises No. 49, Shyama Pally, Jadavpur, Kolkata – 700032, West Bengal, India”, was incorporated on June 16, 2010, with the ROC, Kolkata, West Bengal with CIN No. as U45400WB2010PLC150439.
 2. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) conducted an examination into the fund-raising activity of JSDPL in respect of *Redeemable Preference Shares* (hereinafter referred to as “RPS”).
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3. On enquiry by SEBI, it was observed that JSDPL had made an offer of RPS in the year 2011-12 and 2012-13 (hereafter referred to as **“Offer of RPS”**) and raised an amount of Rs. 38.58 Lakhs during the financial years 2011-12, and 2012-13.

4. As the above said Offer of RPS was found prima facie in violation of respective provisions of the SEBI Act, 1992 (hereinafter referred to as **“SEBI Act”**) and the Companies Act, 1956, SEBI passed an interim order dated February 17, 2016 (hereinafter referred to as **“Interim Order”**) and issued directions mentioned therein against JSDPL and its Promoters/Directors, viz. Shri Mithun Chakraborty, Shri Abhijit Khan, Shri Nilanjan Dutta Chowdhury, Shri Pradip Chakraborty, Shri Biswajit Pramanik, Shri Nitish Chandra Tarafdar, Smt Shikha Chakraborty, Shri Chiranjit Kundu, M/s. Jivan Sathi Life Care Agencies Private Limited and Smt Roshni Guha (hereinafter collectively referred to as **“Noticees”**).

5. *Prima facie findings/allegations:* In the said interim order, the following prima facie findings/allegation were recorded. JSDPL had made an offer of RPS during the Financial Years 2011–12 and 2012–13 and raised an amount of Rs. 38.58 Lakhs as shown below:

Year of Issue	Security Issued	Amount raised (Rs. In Lakhs)	Number of allottees
2011 – 2012	Redeemable Preference Shares	25.25	186
2012 – 2013		13.32	176
Total		38.58	362

6. The above offer of RPS and pursuant allotment were deemed public issue of securities under the first proviso to Section 67(3) of the Companies Act, 1956. Accordingly, the resultant requirement under Section 60 read with Section 2(36), Section 56, Sections 73(1),(2) and (3) of the Companies Act, 1956 read with Section 27(2) of SEBI Act were not complied with by JSDPL in respect of the offer of RPS.
7. In view of the prima facie findings on the violations, the following directions were issued in the said interim order dated February 15, 2016 with immediate effect.
- i. “JSDPL shall not mobilize any fresh funds from investors through the *Offer of Redeemable Preference Shares* or through the issuance of equity shares or any other securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;
 - ii. JSDPL, its past and present Directors and Promoters, viz. Shri Mithun Chakraborty (DIN: 02750738; PAN: AIDPC5794L), Shri Abhijit Khan (DIN: 06559761; PAN: ALPPK7212C), Shri Nilanjan Dutta Chowdhury (DIN: 05190679; PAN: ASDPC5559M), Shri Pradip Chakraborty (DIN: 02750760; PAN: AJJPC6225B), Shri Biswajit Pramanik (DIN: 03018031; PAN: BVJPP4375A), Shri Nitish Chandra Tarafdar (PAN: ABPPT8081J), Smt Shikha Chakraborty (PAN: AKJPC3739K), Shri Chiranjit Kundu (PAN: AVOPK9564G), M/s. Jivan Sathi Life Care Agencies Private Limited (CIN: U74900WB2009PTC139173) and Smt Roshni Guha (DIN: 03382122; PAN: AVJPG3285H), are prohibited from issuing prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, till further orders;
 - iii. JSDPL and its abovementioned past and present Directors and Promoters, are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities market, either directly or indirectly, till

further directions;

- iv. JSDPL shall provide a full inventory of all its assets and properties;
- v. JSDPL's abovementioned past and present Directors and Promoters, shall provide a full inventory of all their assets and properties;
- vi. JSDPL and its abovementioned present Directors and Promoters, shall not dispose of any of the properties or alienate or encumber any of the assets owned/acquired by that company through the *Offer of Redeemable Preference Shares*, without prior permission from SEBI;
- vii. JSDPL and its abovementioned present Directors and Promoters, shall not divert any funds raised from public at large through the *Offer of Redeemable Preference Shares*, which are kept in bank account(s) and/or in the custody of JSDPL;
- viii. JSDPL and its abovementioned past and present Directors and Promoters, shall furnish complete and relevant information (as sought by SEBI letter dated October 22, 2015), within 14 days from the date of receipt of this Order. ”

8. The interim order also directed the Noticees to show cause as to why suitable directions/prohibitions under sections 11(1), 11(4), 11A and 11B of the SEBI Act, and section 73(2) of the Companies Act, 1956 read with section 27(2) of the SEBI Act should not be passed against them:

- i. Directing them jointly and severally to refund money collected through the *Offer of Redeemable Preference Shares* along with interest, if any, promised to investors therein;
- ii. Directing them not to issue prospectus or any offer document or issue advertisement for soliciting money from the public for the issue of securities, in any manner whatsoever, either directly or indirectly, for an appropriate period;
- iii. Directing them to refrain from accessing the securities market and prohibiting them from buying, selling or otherwise dealing in securities for an appropriate period.

9. Vide the said interim order, the Noticees were given the opportunity to file their replies, within 21 days from the date of receipt of the said interim Order. The order further stated the concerned persons may also indicate whether they desired to avail themselves an opportunity of personal hearing on a date and time to be fixed on a specific request made in that regard.
10. *Service of interim order:* The copy of the said interim order was sent to the Noticees by letter dated February 17, 2016. Further, the copy of the interim order was delivered through affixture to JSDPL and Ms. Roshini Guha on May 09, 2016, to Mr. Nilanjan Dutta Chowdhury on May 12, 2016, to Mr. Biswajit Pramanik on May 13, 2016, to Mr. Pradip Chakraborty, Mr. Mithun Chakraborty and Ms. Shikha Chakraborty on May 17, 2016, to M/s Jivan Sathi Life Care Agencies Private Limited on July 09, 2016. Subsequently, vide notification dated November 08, 2016 published in newspaper *Ananda Bazar Patrika*, and notification dated November 09, 2016 published in newspaper *Times of India*, Noticees were notified by SEBI, that interim order dated February 17, 2016 was issued against them and they had given final opportunity to submit their reply in the matter.
11. Vide notification dated June 10, 2017 published in newspaper *Ananda Bazar Patrika*, and notification dated June 10, 2017 published in newspaper *Times of India*, the Noticees were notified by SEBI, that they will be given the final opportunity of being heard on July 12, 2017 at the time and the venue mentioned therein. The Noticees were advised that in case they fail to appear for the personal hearing before SEBI on the aforesaid date, then the matter would be proceeded ex-parte on the basis of material available on record.

12. *Hearing and submissions:* Noticees did not avail the opportunity of hearing held on July 12, 2017. None of the Noticees have replied except Mr. Anirban Ghosh who on behalf of Mr. Mithun Chakraborty, Shri Pradip Chakraborty and Ms. Shikha Chakraborty submitted the common reply dated May 28, 2016. Their submissions in brief are as under:

- (a) JSDPL was incorporated under Companies Act, 1956 on June 16, 2010. Upon obtaining the certificate for commencement of business from the Registrar of Companies after complying the necessary provisions of the Companies Act as well as the other Act for the time being in force within the territory of India JSDPL had commenced business of real estate upon issuing of RPS in the year 2011-12 and 2012-13 and collected the fund for carrying the business of real estate.
- (b) There was no mala-fide intention on the part of Mr. Mithun Chakraborty, Shri Pradip Chakraborty and Ms. Shikha Chakraborty to cheat the investors/purchasers of RPS. The investors were aware about their intention to refund the share value, if claimed, subject to the availability of funds/assets at their disposal.
- (c) They are ready to refund the money in compliance with the statutory provisions.

13. I have considered the allegations and materials available on record including documents downloaded from MCA 21 Portal. On perusal of the materials available on record, the following issues arise for consideration. Each question is dealt with separately under different headings.

- (1) Whether the company came out with the Offer of RPS as stated in the interim order?*
- (2) If so, whether the said issues are in violation of Section 60, Section 56 and Section 73 the Companies Act, 1956?*
- (3) If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?*

ISSUE No. 1 – Whether the company came out with the Offer of RPS as stated in the interim order?

14. I have perused the interim order dated February 17, 2016 for the allegation of offer of RPS. I note that promoters/directors Mr. Mithun Chakraborty, Shri Pradip Chakraborty and Ms. Shikha Chakraborty have accepted that company made the offer of RPS and collected the money from the investors to carry out the business of real estate. I also note that neither the company nor the other promoters/directors filed any reply disputing the same.
15. I have also perused the documents/ information obtained from the ‘MCA 21 Portal’ other documents available on records. It is noted that JSDPL has issued and allotted RPS to 362 investors during the financial years 2011-2012 and 2012-2013 and raised a total amount of Rs. 38.58 Lakhs.

ISSUE No. 2 – If so, whether the said issues are in violation of Section 60, Section 56 and Section 73 the Companies Act, 1956?

16. The provisions alleged to have been violated and mentioned in Issue No.2 are applicable to the offer of RPS made to the public. Therefore the primary question that arises for consideration is whether the issue of RPS is ‘public issues’. At this juncture, reference may be made to section 67(1) & (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).”

17. The following observations of 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:-

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

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

18. Section 67(3) of Companies Act, 1956 provides for situations when an offer is not considered as offer to public. As per the said sub section, if the offer is one which is not calculated to result, directly or indirectly, in the shares or debentures becoming available

for subscription or purchase by persons other than those receiving the offer or invitation, or, if the offer is the domestic concern of the persons making and receiving the offer, the same are not considered as public offer. Under such circumstances, they are considered as private placement of shares and debentures. 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 to fifty or more persons. However, the *second proviso* to Section 67(3) of Companies Act, 1956 exempts NBFCs and Public Financial Institutions from the applicability of the *first proviso*.

19. In the instant matter, I find that RPS were issued by JSDPL to 362 investors in the financial years 2011-12 and 2012-13(186 investors and 176 investors respectively), which indicates that the Offer of RPS was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956. Neither JSDPL nor other Noticees have contended that the Offer of RPS does not fall within the ambit of first proviso of section 67(3) of Companies Act, 1956. Therefore, in view of the material available on record, I am of the opinion that the Offer of RPS by JSDPL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the Offer of RPS are deemed to be public issues and JSDPL was mandated to comply with the ‘public issue’ norms as prescribed under the Companies Act, 1956.

20. Further, since the offer of RPS is 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 section 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.

21. The allegations of non-compliance of the above provisions were not denied by JSDPL or its promoters / 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 JSDPL has contravened the said provisions. JSDPL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that JSDPL has also not complied with the provisions of section 73(3) of Companies Act, 1956 which mandates that the amounts received from investors shall be kept in a separate bank account and failed to repay the same in accordance with section 73(2) of Companies Act, 1956 as observed above.
22. Section 2(36) of the Companies Act read with section 60 of 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 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 of RPS was a deemed public issue of securities, JSDPL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that JSDPL has not submitted any record to indicate that it has registered a prospectus with the RoC, in respect of the offer of RPS. I, therefore, find that JSDPL has not complied with the provisions of section 60 of the Companies Act, 1956.
23. 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. The allegation of non-compliance of the above provisions was not denied by the company or directors or the promoters. Neither JSDPL nor its directors produced any record to show that it has issued 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, JSDPL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.

24. I note that 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”

25. 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...”

26. In view of the above findings, I am of the view that JSDPL was engaged in fund mobilizing activity from the public, through the offer of RPS and has contravened the provisions of Sections 56(1), 56(3), 2(36) read with 60, 73(1), 73(2), 73(3) of the Companies Act, 1956.

ISSUE No. 3 – If the findings on Issue No.2 are found in the affirmative, who are liable for the violation committed?

27. From the documents available on record and from the copy of Memorandum and Articles of Association of the Company, I find that Shri Mithun Chakraborty, Shri Pradip Chakraborty, Shri Biswajit Pramanik, Shri Nitish Chandra Tarafdar, Smt Shikha

Chakraborty, Shri Chiranjit Kundu, M/s. Jivan Sathi Life Care Agencies Private Limited are the promoters / first subscribers to Memorandum of Association (MoA) of the company. Shri Mithun Chakraborty, Shri Pradip Chakraborty, Shri Biswajit Pramanik, Smt Roshni Guha, Shri Abhijit Khan and Shri Nilanjan Dutta Chowdhury are the directors of the company.

28. Section 56(1) and 56(3) read with section 56(4) of the Companies Act, 1956 imposes the liability on the company, every director, and other persons responsible for the prospectus for the compliance of the said provisions. The liability for non-compliance of Section 60 of the Companies Act, 1956 is on the company, and every person who is a party to the non-compliance of issuing the prospectus as per the said provision. Therefore, JSDPL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.

29. 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 Government's) General Rules and Forms, 1956, the rate of interest prescribed in this regard is 15%.

30. I find from the material available on record that the details of the appointment and

resignation of the directors were provided by RoC, which is reproduced below:

Sr. No.	Name of the directors	Date of appointment	Date of cessation
1.	Shri Mithun Chakraborty	16/06/2010	Continuing
2.	Shri Pradip Chakraborty	16/06/2010	18/05/2013
3.	Shri Biswajit Pramanik	16/06/2010	25/03/2011
4.	Smt Roshni Guha	25/02/2011	18/05/2013
5.	Shri Abhijit Khan	14/05/2013	Continuing
6.	Shri Nilanjan Dutta Chowdhury	14/05/2013	Continuing

31. From the document available on records, I find that the allotment of RPS by JSDPL was started from August 01, 2011 and completed on October 04, 2012.
32. From the above table, it is noted that Mr. Biswajit Pramanik had resigned from the Company on March 25, 2011 i.e. prior to the financial year 2011-12 and 2012-13. Further, it is a matter of record that the allotment of RPS by JSDPL was started from August 01, 2011 i.e. after Mr. Biswajit Pramanik had left JSDPL. In the absence of any other material to show the involvement of Mr. Biswajit Pramanik, as director, in the offer and allotment of NCDs, I am inclined to give the benefit of doubt to him. Therefore, I find that Mr. Biswajit Pramanik as director cannot be held responsible for refund to the investors. However, he is one of the promoters of the Company. There is no material to show that he ceased to be promoter during the period of issuance of RPS. Therefore, he is liable as promoter for the issuance of RPS against the norms of deemed public issue. In view of this, he is liable to be debarred from securities market for appropriate period of time.
33. I note that in the interim order dated February 15, 2015, the main allegation levelled against JSDPL and other entities is that JSDPL had engaged in fund mobilizing activity

from the public, through its offer and issue of RPS and violated the provisions of section 56, section 60 read with section 2(36) and section 73 of the Companies Act, 1956. In this regard, I note from the record that Mr. Abhijit Khan and Mr. Nilajan Dutta Chowdhury, were appointed as a director of JSDPL w.e.f. May 14, 2013. Further, it is also a matter of record that the allotment of RPS by JSDPL was completed on October 04, 2012 i.e. before Mr. Abhijit Khan and Mr. Nilajan Dutta Chowdhury joined JSDPL as directors. In view thereof, I find that Mr. Abhijit Khan and Mr. Nilajan Dutta Chowdhury became directors of JSDPL after the offer, issue and allotment of RPS by JSDPL was complete and therefore, they cannot be held responsible for violations of JSDPL regarding offer, issue and allotment of RPS and consequent refund to the investors. However, being present directors of the company, they have failed to ensure the timely refund to the investors by company as mandated under law. Therefore, they are liable to be debarred from securities market for appropriate period of time.

34. From the above table it is noted that Shri Mithun Chakraborty, Shri Pradip Chakraborty and Smt Roshni Guha joined and resigned as mentioned above. All of the said persons were directors at the time of the issuance of RPS. Since these persons were acting as directors during the period of issuance of RPS, they are officers in default as per Section 5(g) of Companies Act, 1956. Further, 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 JSDPL was entrusted to discharge the obligation contained in Section 73 of the Companies Act, 1956. Therefore, as per Section 5(g) of the Companies Act, 1956 all the directors of JSDPL as officers in default, are liable to make refund along with interest under section 73(2) of the Companies Act, 1956. Since, the liability of the company to repay under Section 73(2) of Companies Act, 1956 is continuing and such liability continues till all the repayments are made, the above said directors 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, and section 27(2) of the SEBI

Act. Therefore, I find that JSDPL and its Directors, viz. Shri Mithun Chakraborty, Shri Pradip Chakraborty and Smt Roshni Guha are jointly and severally liable to refund the amounts collected from the investors with interest at the rate of 15 % per annum, for the non-compliance of the above mentioned provisions.

35. Being the original subscribers of MoA / promoters of the company, namely Shri Nitish Chandra Tarafdar, Smt. Shikha Chakraborty, Shri Chiranjit Kundu, and M/s Jivan Sathi Life Care Agencies Private Limited cannot deny their connection with the company. In view of fact that the resolution allegedly passed under section 81(1A)(a) companies Act, 1956 is required to be passed through special resolution in the general body meeting, the promoter shareholders are deemed to have knowledge of the resolution. Therefore, the promoters are aware of the deemed public issue of RPS in the instance case. The public interest requires that the persons who had knowledge/ consent/ connivance in the act/ omission which constitutes violation of the provisions of the public issue be made accountable to the investors. Therefore, they are liable to be debarred for appropriate period of time.

36. In view of the foregoing, the natural 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 direct the Company, JSDPL and its Directors, viz. Shri Mithun Chakraborty, Shri Pradip Chakraborty and Smt Roshni Guha to refund the monies collected, with interest to such investors. Further, in view of the violations committed by the Company and its promoters and directors, to safeguard the interest of the investors who had subscribed to such RPS issued by the Company, to safeguard their investments, and to further ensure orderly development of securities market, it also becomes necessary for SEBI to issue appropriate directions against the Company and the other Noticees.

37. I also note that, vide the interim order dated February 17, 2016, JSDPL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the directors and promoters of JSDPL were also directed to provide an inventory of assets and properties belonging to them. The above inventories were required to be filed within 21 days of the receipt of the order. However, I find that no such inventory has been provided either by JSDPL or its promoters and directors despite the notifications of issuance of the interim order through newspaper publications as stated in paragraph 10 of this order.

38. In view of the discussion above, appropriate action in accordance with law needs to be initiated against JSDPL and its Promoters/Directors, viz. Shri Mithun Chakraborty, Shri Abhijit Khan, Shri Nilanjan Dutta Chowdhury, Shri Pradip Chakraborty, Shri Biswajit Pramanik, Shri Nitish Chandra Tarafdar, Smt Shikha Chakraborty, Shri Chiranjit Kundu, M/s. Jivan Sathi Life Care Agencies Private Limited and Smt Roshni Guha.

39. 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 of the SEBI Act, hereby issue the following directions:

- (a) JSDPL, Shri Mithun Chakraborty, Shri Pradip Chakraborty and Smt Roshni Guha shall forthwith refund the money collected by the Company through the issuance of RPS including the money collected from investors, till date, pending allotment of securities, if any, with an interest of 15% per annum, from the date when the repayments became due (in terms of Section 73(2) of the Companies Act, 1956) to the investors till the date of actual payment.

- (b) The 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”.
- (c) JSDPL, Shri Mithun Chakraborty, Shri Pradip Chakraborty and Smt Roshni Guha are directed to provide a full inventory of all their assets, and properties and details of all their bank accounts, demat accounts and holdings of mutual funds/shares/securities held in physical and demat form.
- (d) JSDPL and its present directors including, Shri Mithun Chakraborty, Shri Abhijit Khan and Shri Nilanjan Dutta Chowdhury are permitted to sell the assets of the Company 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.
- (e) Shri Pradip Chakraborty, Smt Roshni Guha and Shri Mithun Chakraborty, are directed not to sell 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.

- (f) JSDPL, Shri Pradip Chakraborty, Smt Roshni Guha, Shri Mithun Chakraborty, Shri Abhijit Khan and Shri Nilanjan Dutta Chowdhury, shall issue public notice, in all editions of two National Dailies (one English and one Hindi) and in one local daily (in Bengali) with wide circulation, detailing the modalities for refund, including the details of contact persons such as names, addresses and contact details, within 15 days of this Order coming into effect.
- (g) After completing the aforesaid repayments, JSDPL, Shri Pradip Chakraborty, Smt Roshni Guha, Shri Mithun Chakraborty, Shri Abhijit Khan and Shri Nilanjan Dutta Chowdhury, shall file a report of such completion with SEBI, within a period of three months from the date of this order, 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 (“ICAI”).
- (h) In case of failure of JSDPL, Shri Pradip Chakraborty, Smt Roshni Guha, Shri Mithun Chakraborty, Shri Abhijit Khan and Shri Nilanjan Dutta Chowdhury to comply with the aforesaid directions, SEBI, on the expiry of three months period from the date of this Order:
- i. may recover such amounts, from the company and the directors liable to refund, in accordance with section 28A of the SEBI Act including such other provisions contained in securities laws.
 - ii. may initiate appropriate action against the Company, its promoters/directors and the persons/officers who are in default, including adjudication proceedings against them, in accordance with law.

- iii. would make a reference to the State Government/ Local Police to register a civil/ criminal case against the Company, its promoters, directors and its managers/ persons in-charge of the business and its schemes, for offences of fraud, cheating, criminal breach of trust and misappropriation of public funds;
- (i) JSDPL, Shri Mithun Chakraborty, Shri Abhijit Khan, Shri Nilanjan Dutta Chowdhury, Shri Pradip Chakraborty and Smt Roshni Guha are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner, from the date of this Order, till the expiry of 4 (four) years from the date of completion of refunds to investors as directed above. 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 from the date of this Order till the expiry of 4 (four) years from the date of completion of refunds to investors.
- (j) Shri Biswajit Pramanik, Shri Nitish Chandra Tarafdar, Smt Shikha Chakraborty, Shri Chiranjit Kundu and M/s. Jivan Sathi Life Care Agencies Private Limited are directed not to, directly or indirectly, access the securities market, by issuing prospectus, offer document or advertisement soliciting money from the public and are further restrained and prohibited from buying, selling or otherwise dealing in the securities market, directly or indirectly in whatsoever manner for a period of 4 (four) years 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 four years from the date of this Order.

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

40. This Order is without prejudice to any action that SEBI may initiate under securities laws, as deemed appropriate in respect of the above violations committed by JSDPL and its promoters, directors and other key persons.

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

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

- Sd-

DATE: AUGUST 23, 2017

PLACE: MUMBAI

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