

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 of the Securities and Exchange Board of India Act, 1992

In the matter of IMAX Projects India Limited

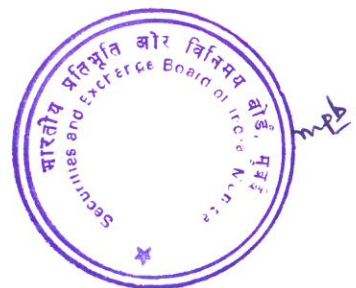
In respect of:

1. IMAX Projects India Limited (PAN: AACCI1617C)
2. Shri Dilip Kumar Verma (PAN: AEFV2812Q; DIN: 01074450).
3. Shri Bibhash Chakraborty (PAN: ACAPC5686Q; DIN: 01074450).
4. Shri Vidyasagar Singh (PAN: ATTPS0036J; DIN: 01096428).

1. IMAX Projects India Limited (hereinafter referred to as “IPIL”/ “the Company”) is a Public company incorporated on August 24, 2009 and registered with Registrar of Companies–Kolkata with CIN: U45400WB2009PLC137942. Its registered office is at 116, N.S.C Bose Road, Kolkata - 700040.
2. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) received a letter/complaint regarding IPIL in respect of issue of Redeemable Preference Shares (“RPS”) and undertook an enquiry to ascertain whether IPIL had made any public issue of 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.
3. On enquiry by SEBI, it was observed that IPIL had made an offer of RPS in the financial years 2009-2010, 2010-2011, 2011-2012 and 2012-2013 (hereinafter referred to as “Offer of RPS”) to 2181 allottees.
4. As the above said *Offer of RPS* was found *prima facie* in violation of respective

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Order in the matter of M/s. IMAX Projects India Limited



provisions of the SEBI Act, 1992 and the Companies Act, 1956, SEBI passed an interim order dated December 01, 2015 (hereinafter referred to as “**interim order**”) and issued directions mentioned therein against IPIL and its Directors viz. Shri Dilip Kumar Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh and (hereinafter collectively referred to as “**Noticees**”).

5. *Prima facie findings/allegations*: In the said interim order, the following *prima facie* findings were recorded. IPIL had made an *Offer of RPS* during the financial years 2009-2010, 2010-2011, 2011-2012 and 2012-2013, as shown below:

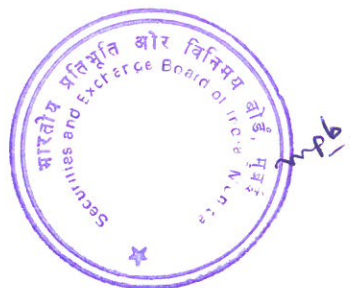
| Year of Issue | Security Issued | Number of allottees |
|---------------|-----------------|---------------------|
| 2009-2010     | RPS             | 999                 |
| 2010-2011     |                 | 1025                |
| 2011-2012     |                 | 81                  |
| 2012-2013     |                 | 76                  |
|               |                 |                     |
| Total         |                 | 2181                |

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), 73(2) and 73(3) read with section 27(2) of the SEBI Act, which were to be complied with, were not complied with by IPIL 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 December 01, 2015 with immediate effect.
- i. “IPIL 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



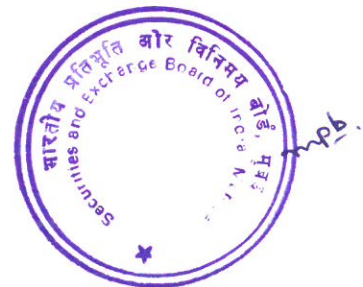
securities, to the public and/or invite subscription, in any manner whatsoever, either directly or indirectly till further directions;

- ii. IPIL and its Directors, viz. Shri Dilip Kumar Verma (PAN: AEFPV2812Q; DIN: 01074450), Shri Bibhash Chakraborty (PAN: ACAPC5686Q; DIN: 02272487) and Shri Vidyasagar Singh (PAN: ATTPS0036J; DIN: 01096428), 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. IPIL and its abovementioned Directors, 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. IPIL shall provide a full inventory of all its assets and properties;
- v. IPIL's abovementioned Directors shall provide a full inventory of all their assets and properties;
- vi. IPIL and its abovementioned Directors 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. IPIL and its abovementioned Directors shall not divert any funds raised from public at large through the Offer of Redeemable Preference Share, which are kept in bank account(s) and/or in the custody of IPIL;
- viii. IPIL and its abovementioned Directors shall furnish complete and relevant information in respect of the Offer of Redeemable Preference Shares (as sought by SEBI letter dated October 9, 2015), within 14 days from the date of receipt of



this Order.

8. The interim order also directed the IPIL and its Directors 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, IPIL, and its abovementioned Directors 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 vide letter dated December 15, 2015. Vide reply dated January 6, 2016, Shri Dilip Kumar Verma requested for time to file the replies and requested for a personal hearing at Kolkata. Vide reply dated January 20, 2016, all the Noticees submitted that the process of redemption of the RPS had begun and requested for additional time to submit the relevant details as sought for in the interim order. However, no such submission was made. Subsequently, vide notification dated November 09, 2016 published in newspaper



*The Times of India*, and notification dated November 08, 2016 published in newspaper *Anand Bazar Patrika*, the Noticees were notified by SEBI, that interim order dated December 01, 2015 was issued against them and they were given a final opportunity to submit their reply in the matter.

11. Vide notification dated June 10, 2017 published in newspaper *The Times of India* and notification dated June 10, 2017 published in newspaper *Anand Bazar Patrika*, the Noticees were once again 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 failed 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. SEBI vide letter dated August 17, 2017 sought for supporting documentary evidence from the Noticees. Thereafter, the Company filed a written submission dated September 9, 2017 wherein it has submitted *inter alia*, the following:
  - a. Issuance of RPS was made only to directors, employees, associates and relatives of promoters, directors, employees and associates and not to the public.
  - b. Serious steps have been taken to refund all the amount mobilized and relevant documents in this regard have been submitted. Till March 31, 2014, Company has redeemed Rs. 2,09,85,660/-. Further, the Company has submitted that it intends to completely redeem all preference shares within March 31, 2018.
13. I have considered the allegations and materials available on record. On perusal of the same, 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 56, Section 60 and Section 73 of 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 December 01, 2015 for the allegation of Offer of RPS.

15. I have also perused the documents/ information obtained from the 'MCA 21 Portal' other documents available on records. The following are the details noted by me after a perusal of the aforesaid documents:

| Year of Issue | Security Issued | Number of allottees |
|---------------|-----------------|---------------------|
| 2009-2010     | RPS             | 1009                |
| 2010-2011     |                 | 1043                |
| 2011-2012     |                 | 81                  |
| 2012-2013     |                 | 76                  |
| Total         |                 | 2209                |

16. It is noted that IPIL has issued and allotted RPS to at least 2209 and not 2181 investors during the financial years 2009-2010, 2010-2011, 2011-2012 and 2012-2013. I note that neither the Company nor the directors have disputed the finding as to issuance of RPS. I further note from Form 20B submitted by the Company that it had mobilised an amount of Rs. 2,96,35,370/- by way of issue of RPS as on March 31, 2013. The same is corroborated by the Company's Audit Reports for the year ended March 31, 2013.

17. I therefore conclude that IPIL came out with an offer of RPS as outlined above.



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

18. 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 issue'. At this juncture, reference may be made to sections 67(1) 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)."*

19. The following observations of the Hon'ble Supreme Court of India in *Sahara India Real Estate Corporation Limited & Ors. v. 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.*

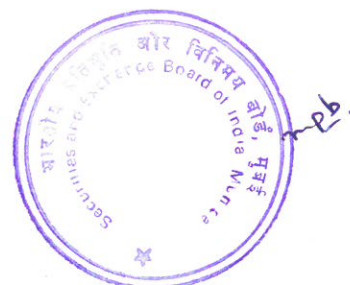
*The first proviso to Section 67(3) was inserted by the Companies*



mpb.

*(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.”*

20. 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*.
21. In the instant matter, I find that RPS were issued by IPIL to at least 2209 investors in the financial years 2009-2010, 2010-2011, 2011-2012 and 2012-2013. The number of allottees for the *Offer of RPS* in each financial year, as given in Paragraph 15, lead to the conclusion that the *Offer of RPS* by IPIL was a “public issue” within the meaning of the first proviso to section 67(3) of the Companies Act, 1956.
22. IPIL in its written submission dated September 9, 2017 has submitted that the issue of RPS was not made to the public but to employees, associates, directors and relatives of



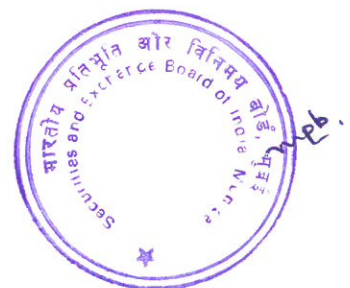
the same. However, no proof has been provided substantiating the same despite numerous opportunities. Reference may be made to the *Sahara Case*, wherein it was held that under Section 67(3) of the Companies Act, 1956, the "*Burden of proof is entirely on Saharas to show that the investors are/were their employees/workers or associated with them in any other capacity which they have not discharged.*" In respect of the present issuances, the Noticees have not placed any material showing that the allotment was in satisfaction of section 67(3)(a) or 67(3)(b) of Companies Act, 1956 i.e., it was made to the known associated persons or domestic concern. Therefore, I find that the said issuance cannot be considered as private placement.

23. I also note that the offer of RPS was made to more than 50 people, and the same has not been controverted by the Noticees. Therefore, I find that the aforesaid submission of the Noticees has no merit and in view of the material on record, I find that the Offer of RPS falls within the first proviso to section 67(3) of the Companies Act, 1956.
24. Even in cases where the issue is made in tranches, reference may be made to the order dated April 28, 2017 of Hon'ble Securities Appellate Tribunal in *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. 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*".
25. I find that IPIL 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 IPIL is covered under the second proviso to Section 67(3) of the Companies Act, 1956.
26. Therefore, in view of the material available on record, I find that the *Offer of RPS* by IPIL falls within the first proviso of section 67(3) of Companies Act, 1956. Hence, the *Offer of RPS* is deemed to be public issue and IPIL was mandated to comply with the



'public issue' norms as prescribed under the Companies Act, 1956.

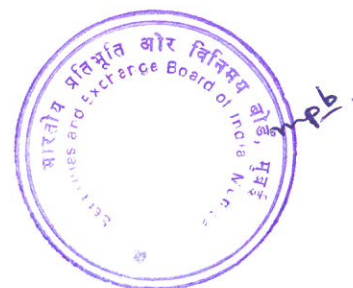
27. Further, since the offer of RPS is a public issue of securities, such securities shall also have to be listed on a recognized stock exchange, as mandated under section 73 of the Companies Act, 1956. As per section 73(1) and (2) of the Companies Act, 1956, a company is required to make an application 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.
28. The allegations of non-compliance of the above provisions were not denied by IPIL 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 IPIL has contravened the said provisions. IPIL has not provided any records to show that the amount collected by it is kept in a separate bank account. Therefore, I find that IPIL has also not complied with the provisions of section 73(3) which mandates that the amounts received from investors shall be kept in a separate bank account. Therefore, I find, that section 73(2) of the Companies Act, 1956 has not been complied with.
29. Section 2(36) of the Companies Act read with section 60 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), "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, IPIL was required to register a prospectus with the RoC under Section 60 of the Companies Act, 1956. I find that IPIL 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 IPIL has not complied with the provisions of section 60 of the Companies Act, 1956.



30. 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. Neither IPIL 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, IPIL has not complied with sections 56(1) and 56(3) of the Companies Act, 1956.
31. Further, 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".*



32. 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...”*

33. In view of the above findings, I am of the view that IPIL 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?**

34. From the documents available on record, I find that the present Directors in IPIL are as following:



| Name of the directors    | Date of appointment | Date of cessation |
|--------------------------|---------------------|-------------------|
| Shri Dilip Kumar Verma   | August 24, 2009     | Continuing        |
| Shri Bibhash Chakraborty | August 24, 2009     | Continuing        |
| Shri Vidyasagar Singh    | August 24, 2009     | Continuing        |

35. 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, IPIL and its directors are held liable for the violation of sections 56(1), 56(3) and 60 of the Companies Act, 1956.
36. 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%.
37. From the material available on record and the details of the appointment of the directors of IPIL as reproduced in paragraph 34 of this Order, it is noted that Shri Dilip Kumar



Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh 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 of Companies Act, 1956 or any specified director of IPIL 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 IPIL, as officers in default, are liable to make refund, jointly and severally, 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. Since, the liability of the company to repay under section 73(2) 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 IPIL and its Directors, viz. Shri Dilip Kumar Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh 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.

38. I note that during the financial years 2009-2010, 2010-2011, 2011-2012 and 2012-2013 IPIL through Offer of RPS, had mobilized funds from various allottees. Company vide its reply dated November 17, 2015, has provided copies of its Annual Returns filed by the RoC, for the financial years ended March 31, 2010, March 31, 2011, March 31, 2012, March 31, 2013 and March 31, 2014. It has also submitted the Form 20B filed by the Company with the RoC, as on March 31, 2013. From the said documents I find that a total amount of Rs. 2,96,35,370/- has been mobilized by the Company as on March 31, 2013 through issuance of RPS. Additionally from the documents submitted by the Company along with its written submission dated September 9, 2017, an amount of Rs.



22,00,000/- was shown as share application money pending allotment as on March 31, 2015, which is shown to have decreased to Rs. 16,00,000/- as on March 31, 2016. I find that the Company has not provided any documentary evidence to explain the decrease in the amount of share application money pending allotment. Company vide its own written submissions dated September 9, 2017, has claimed that it has made refund of Rs. 2,09,85,660/-. In this regard the Noticee has submitted bank account statements of the Company. However, I find that several aspects of refund such as, the list of allottees to whom refund was made, the interest paid to each allottee, etc. remain unclear from bank account statements, and is therefore, not enough to prove repayment. I find that the Noticees have not provided any documentary evidence by way of an Auditors' Report of the refund encompassing the above aspects of refund, indicating that the same was made as per the provisions of section 73 of the Companies Act, 1956.

39. I note that Shri Dilip Kumar Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh were directors of IPIL during the financial years 2009-2010, 2010-2011, 2011-2012 and 2012-2013, and continue to be directors of IPIL till date. Therefore, in view of Hon'ble Securities Appellate Tribunal (SAT) Order dated July 14, 2017 in the matter of *Manoj Agarwal vs. SEBI*, I am of the view that the obligation of the director to refund the amount with interest jointly and severally with IPIL and other directors are limited to the extent of amount collected during his/her tenure as director of IPIL.
40. 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 IPIL and its Directors, viz. Shri Dilip Kumar Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh to refund the monies collected, with interest to such investors.
41. I also note that, vide the interim order dated December 01, 2015, IPIL was directed to provide a full inventory of all the assets and properties belonging to the Company. Similarly, the Directors of IPIL 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 IPIL or the other Noticees despite the notifications of information of issuance of the interim order through newspaper publications as stated in paragraph 10 of this Order.

42. In view of the discussion above, appropriate action in accordance with law needs to be initiated against IPIL and its Directors, viz. Shri Dilip Kumar Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh.
43. 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:
- IPIL and its Directors, viz. Shri Dilip Kumar Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh 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 eighth day of collection of funds, to the investors till the date of actual payment
  - If IPIL and its Directors, viz. Shri Dilip Kumar Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh had repaid/redeemed the Preference Shares as submitted in its replies to its investors as per section 73(2) of the Companies Act, along with promised returns, the above directions and the below mentioned consequential directions from paragraphs 43(c) to 43(i), shall be applicable for the amounts due to be returned to the investors. However, such prior repayments/redemption should have been made by the Company as per the requirement laid down in paragraph 43(c) below or via banking channels with clear identification of the beneficiaries, and the same shall be certified by Chartered Accountants, as directed in paragraph 43(h) below. For consideration as refunds, the said refund should not have been made in cash or kind
  - 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”.

d. IPIL and its Directors, viz. Shri Dilip Kumar Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh 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 and their own.

e. IPIL and Shri Dilip Kumar Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh are prevented from selling the Company’s assets, properties and holding of mutual funds/shares/securities held by the Company 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. Shri Dilip Kumar Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh 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.

g. IPIL and its Directors, viz. Shri Dilip Kumar Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh, in their personal capacity to make refund, 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 15 days of this Order coming into effect.



h. After completing the aforesaid repayments, IPIL and its Directors, viz. Shri Dilip Kumar Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh 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")

i. In case of failure to comply with the aforesaid applicable 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 as specified in paragraph 43(a) of this Order, 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;

j. IPIL and its Directors, viz. Shri Dilip Kumar Verma, Shri Bibhash Chakraborty and Shri Vidyasagar Singh 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 directors 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.

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

44. 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 IPIL and its directors and other key persons.

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

46. 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.

**DATE: October 04, 2017**

**PLACE: Mumbai**



*Madhabi Puri Buch*

**MADHABI PURI BUCH  
WHOLE TIME MEMBER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**